International Monetary Fund (IMF)

by

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This monograph has been reviewed by the Author and is up-to-date as of December 2018

2019

Wolters Kluwer

Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
E-mail: international-sales@wolterskluwer.com
Website: lrus.wolterskluwer.com

Sold and distributed in North, Central and South America by:
Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

Sold and distributed in all other countries by:
Air Business Subscriptions
Rockwood House
Haywards Heath
West Sussex
RH16 3DH
United Kingdom
Email: international-customerservice@wolterskluwer.com

The monograph *International Monetary Fund* is an integral part of *Intergovernmental Organizations* in the *International Encyclopaedia of Laws* series.

Printed on acid-free paper.

ISBN 978-90-411-0775-6
Intergovernmental Organizations was first published in 1996.

Viterbo, Annamaria. 'International Monetary Fund'. In *International Encyclopaedia of Laws: Intergovernmental Organizations*, edited by Jan Wouters. Alphen aan den Rijn, NL: Kluwer Law International, 2019.

This title is available on www.kluwerlawonline.com

Printed in the United Kingdom.

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List of Abbreviations

Articles	Articles of Agreement of the International Monetary Fund
BIS	Bank for International Settlements
CACs	Collective Action Clauses
CPIA	Country Policy and Institutional Assessment
DSA	Debt Sustainability Analysis
DSF	Debt Sustainability Framework for Low-Income Countries
ECB	European Central Bank
ECF	Extended Credit Facility
ECOSOC	UN Economic and Social Council
EFF	Extended Fund Facility
EMS	European Monetary System
EMU	European Economic and Monetary Union
EPCA	Emergency Post-Conflict Assistance Policy
EU	European Union
EWG	Eurogroup Working Group
FCL	Flexible Credit Line
FCSs	Fragile and Conflict-Affected Countries
FSAP	Financial Sector Assessment Programme
FSB	Financial Stability Board
FSF	Financial Stability Forum
FSSA	Financial System Stability Assessment
GAB	General Arrangements to Borrow
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GFSN	Global Financial Safety Net
GFSR	Global Financial Stability Report
GRA	General Resources Account
Gs	Intergovernmental Groups (G-7/8, G-10, G-20, G-24)
HIPC	Heavily Indebted Poor Countries
IBRD	International Bank for Reconstruction and Development

List of Abbreviations

ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IEO	Independent Evaluation Office
IFC	International Finance Corporation
ILO	International Labour Organization
IMF	International Monetary Fund
IMFC	International Monetary and Financial Committee
IO	International Organization
JMAP	Joint Management Action Plan
LICs	Low-Income Countries
MDGs	Millennium Development Goals
MDRI	Multilateral Debt Relief Initiative
MEFP	Memorandum on Economic and Financial Policies
MIGA	Multilateral Investment Guarantee Agency
MONA	Monitoring of Fund Arrangements
MoU	Memorandum of Understanding
NAB	New Arrangements to Borrow
NGO	Non-governmental Organization
OECD	Organization for Economic Co-operation and Development
PLL	Precautionary and Liquidity Line
PRGT	Poverty Reduction and Growth Trust
PRS	Poverty Reduction Strategy
PSI	Policy Support Instrument
QPCs	Quantitative Performance Criteria
RCF	Rapid Credit Facility
RFAs	Regional Financing Arrangements
RFI	Rapid Financing Instrument
ROSC	Reports on the Observance of Standards and Codes
SBA	Stand-By Arrangement
SCF	Standby Credit Facility
SCIMF	Subcommittee on the IMF
SDDS	Special Data Dissemination Standard
SDGs	Sustainable Development Goals
SDRM	Sovereign Debt Restructuring Mechanism
SDRs	Special Drawing Rights
SMP	Staff-Monitored Programme
TFEU	Treaty on the Functioning of the European Union
TMU	Technical Memorandum of Understanding

List of Abbreviations

UN	United Nations
UNCTAD	UN Conference on Trade and Development
UNDP	UN Development Programme
UNGA	UN General Assembly
WTO	World Trade Organization

List of Abbreviations

Part I. The IMF's Genesis and Governance Structure

Introduction

1. The International Monetary Fund (IMF) is the only International Organization (IO) that administers and supervises monetary relations between states. The primary purpose of the IMF is to ensure the stability of the international monetary system. The Fund also promotes monetary cooperation, facilitates international trade, promotes employment and sustainable economic growth, and provides technical assistance to member countries. In more practical terms, the Fund is expected to positively contribute to creating the conditions and providing the resources for national and international prosperity.

2. Since its establishment, the Fund has witnessed considerable changes in the global economic landscape. The process of decolonization, increased membership and the emergence of capital markets have created a new environment. However, the Fund's purposes have not been rephrased, and despite pressures to shift its orientation towards the promotion of economic growth and the safeguard of financial stability, it continues to be primarily a monetary institution. The few amendments to the Articles of Agreements mostly refer to the methods by which the Fund is mandated to pursue its objectives. Even if its mandate has not been updated, the IMF has developed the continuous capacity to change and adapt to circumstances, more recently proving able to respond to the unprecedented challenges raised by the global financial crisis.

3. The activities of the IMF are complex, technical and versatile. They are reflected in a myriad of policies, decisions and guidelines. Within the framework of the *International Encyclopaedia of Laws*, there is only opportunity to emphasize key activities of the Fund. Part I discusses the Fund's institutional development and structure. Parts II and III respectively analyse the IMF's supervision of the international monetary system and balance of payments support. Part IV discusses the Fund in the global context.

4. For further reading there is ample literature available. The most important author on the Fund's legal and institutional aspects is the late Sir Joseph Gold, who was the general counsel and director of the legal department. Gold has published dozens of articles and books that explain the purposes and powers of the IMF.

Another important source are the historical studies published by the IMF. The material covers five periods: 1945–1965 (by J. Keith Horsefield), 1966–1971 and 1972–1978 (by Margaret Garritsen de Vries) as well as 1979–1989 and 1990–1999 (by James M. Boughton). The volumes are published by the IMF and include a chronological overview of policy development and the Fund's corpus juris and practice. The IMF published two other useful series of volumes on banking and finance: *Current Legal Issues Affecting Central Banks* (Vol. I–V) and *Current Developments in Monetary and Financial Law* (Vol. 1–6).

5. For keeping track with current developments, the biweekly periodical *IMF Survey* and the *Annual Reports of the Executive Board* are useful sources. Legal documents are published in the *Selected Decisions and Selected Documents of the IMF*. In addition, the Fund maintains a comprehensive Internet site (www.imf.org) that publishes documents and economic data of the Fund and its membership. The index and many cross references conveniently introduce the reader to the Fund's current activities. Sources and documents discussed in this monograph are available on the Fund's website.

Chapter 1. The IMF's Genesis and the Par Value System

6. Towards the end of World War II, a renewed interest for multilateral cooperation developed in the international community. States that had experienced the horrors of the war were ready to cooperate to establish a new system of international relations to promote orderly economic and financial conditions and ensure the maintenance of peace and security.

7. In July 1944 (when the war was at its zenith, but not over yet), the United Nations Monetary and Financial Conference was convened in the town of Bretton Woods (New Hampshire, US) to negotiate the Articles of Agreement of the IMF and the Articles of Agreement of the International Bank for Reconstruction and Development (IBRD).

8. The creation of the Bretton Woods sister organizations was essentially an American-British undertaking. Two economists, Harry Dexter White for the US Treasury and Sir John Maynard Keynes for the British government, were the leading negotiators among the representatives of the forty-four allied governments that gathered at the Conference. Their 'Joint Statement by Experts on the Establishment of an International Monetary Fund' formed the basis of negotiations. The Plan was a merger of Keynes' idea of an 'International Currency (or Clearing) Union' and White's proposal of an 'International Stabilization Fund'. Both proposals addressed the same problem of providing a lending mechanism to help countries address balance of payments shortfalls. However, while the stabilization fund proposal sought adjustment for balance of payments problems mostly from debtors, the clearing union proposal introduced provisions to put pressure on both creditor and debtor countries to share the responsibility for balanced international payments. The final proposal, however, was clearly dominated by White's ideas.

9. The founding fathers of the Bretton Woods Institutions shared a common vision: in order to prevent a new phase of economic instability of a gravity similar to that of the Great Depression of the early 1930s, they intended to create a rule-based multilateral framework – a system of international treaties, institutions and decision-making procedures – to regulate the international monetary system and economic relations among states. The new multilateral framework should have imposed clear obligations on the contracting parties prohibiting the adoption of protectionist and beggar-thy-neighbour policies. During the interwar period, in fact, trade protectionism, exchange restrictions, multiple exchange rates and competitive exchange rate manipulations (especially devaluations) had become a widespread practice. They were used as tools of economic warfare and discouraged cross-border trade and investment flows. Many observers believed that the recurring economic crises and the failure of international cooperation had contributed to the outbreak of the war in 1939. To avoid repetition of the ruinous policies of the interwar period, a new – internationally negotiated – economic order would be established to provide stability, promote economic growth and foster trade and investment. Indeed, there was a general consensus on the fact that achieving peace and economic stability required both collective action at international level and the creation of specialized institutions to promote interstate cooperation.

10. Despite considerable problems on achieving consensus on issues such as the conditions for the use of Fund's resources and the location of the headquarters, the Bretton Woods Conference successfully established a permanent institutional and legal framework that required the firm commitment of states to manage their currencies for the benefit of international monetary stability. Of the forty-four states that had taken part in the negotiations, twenty-nine ratified the IMF Articles of Agreement as original members. The Articles entered into force on 27 December 1945, followed a few days later by the Articles of Agreement of the IBRD, the first agency of the World Bank. Both institutions became specialized agencies of the United Nations (UN) in 1947.

11. The term 'Bretton Woods system' became synonymous of the international monetary regime that emerged at the end of World War II and lasted until 1971. A key feature of the post-war monetary system was that in order to maintain monetary stability, the IMF would oversee a system of exchange rates based on par values. The keystone of the system was the convertibility of the US Dollar into gold at the rate of USD 35 per ounce (as proclaimed in 1934 by Franklin Delano Roosevelt). The currency of all the other Member States were to be fixed against the Dollar at an official exchange rate (the par value). This value had to be expressed in terms of gold as a common denominator or in terms of the US Dollar. Central banks were required to limit exchange rate fluctuations and maintain the exchange rate of their currency within a band of ±1% around the central parity.

12. In order to guarantee 'stability without rigidity', a member was permitted to change the par value of its currency only to correct a 'fundamental disequilibrium' in its balance of payments. To make such a modification, authorization of the IMF was necessary. If a member adjusted its par value in spite of objections by the Fund, that member would not be breaching the Fund's Articles, but the Fund would cease providing balance of payment support to the country making the unauthorized change. Regrettably, though, the notion of fundamental disequilibrium was not defined by the IMF Articles of Agreement. The IMF, however, failed to enforce its regulations: states would often change their exchange rates and par values without consulting the Fund or would fail to declare a par value, choosing instead to let their currency float, while still maintaining full access to IMF resources. In addition, many states did not meet the commitment to maintain the ±1% range around their par value.

13. At the end of the 1960s, the US monetary gold stock had fallen from USD 22.9 billion in 1951 to USD 10.9 billion in 1968. Confidence in the convertibility of US Dollars into gold started to fade and France increased its claims to exchange US Dollars for gold. The par value system collapsed in August 1971, when the US President Richard Nixon 'temporarily' suspended the external convertibility of the Dollar into gold. In December 1971, under the so-called Smithsonian Agreement, the countries of the Group of Ten (G-10) negotiated a devaluation of the US Dollar against gold and a realignment of their currencies. The new structure of parities lasted until 1973 when, during the first oil crisis, a wave of speculation hit the European currencies, which started to float independently against one another. In 1978, when the Second Amendment to the IMF Articles entered into force, the Bretton Woods system of fixed exchange rates was formally terminated.

14. The Second Amendment introduced a new purpose clause within IMF Article IV, and the title of the article was changed from 'Par-Values of Currencies' into 'Obligations Regarding Exchange Arrangements'. The Fund's close control over members' exchange rates was substituted with a high degree of deregulation. IMF members were allowed to choose the form of exchange arrangement they preferred, subject to one exception: the use of gold as denominator was explicitly forbidden. All the other categories of exchange arrangements were – and still are – available: free or managed floating; a peg to another currency or a basket of currencies; the adoption of the currency of another country as legal tender; and participation in a monetary area or a currency union.

15. The firm obligations related to the functioning of the par value system were replaced by the obligation 'to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates' (IMF Article IV, section 1 as amended). Accordingly, the Fund's responsibilities were reduced from a dedicated custodian of a par value system to a supervisor of members' exchange rate policies.

Chapter 2. The IMF's Role in the International Economic System

16. Before studying the IMF in depth, it is useful to have a clear understanding of the triangular relationship between the IMF, the IBRD and the International Trade Organization (ITO). These organizations were supposed to constitute the three pillars of the post-war international economic order. They were supposed to create an integrated framework, with the common objective of promoting, either directly or indirectly, prosperity by fostering the growth of international trade and investment. However, the ITO Charter adopted in March 1948 at the Havana Conference on Trade and Employment never came into effect because ratification by the US proved impossible for political reasons. After the ITO failure, the General Agreement on Tariffs and Trade (GATT) became the principal multilateral trade treaty until the foundation of the World Trade Organization (WTO) in 1994 (on the relationship between the IMF and the WTO *see also infra*, paragraphs 369 ff.).

§1. The IMF and the IBRD: Monetary Stability and Economic Development

17. The IMF and the IBRD were created with complementary purposes. The original mission of the Bank, as devised by the second working commission of the Bretton Woods Conference, consisted in fostering economic development, assisting in the reconstruction of war-torn Europe and favouring the transition to a peacetime economy. Shortly after its foundation, though, due to the US bilateral aid programme for Western Europe (the European Recovery Program launched in 1948), the IBRD shifted its focus to provide project financing and adjustment loans to developing countries.

18. Soon it became clear that the poorest countries could not afford to borrow capital at the almost ordinary market conditions set by the IBRD. To overcome this problem, in 1960 the International Development Association (IDA) was established to provide interest-free long-term loans and grants to the poorest countries.

19. The Articles of Agreement of the IBRD stipulate that among the purposes of the organization there is the promotion of 'the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments' (Article I). To this end, the IBRD promotes economic and social progress through project lending and support to private foreign investments. A major characteristic, therefore, is the IBRD's focus on development, by addressing microeconomic constraints to growth. By contrast, no reference is made to the promotion of economic development in the IMF Articles of Agreement.

20. Whereas the IMF focuses on balances of payments, exchange rate stability, currency convertibility and assists members in implementing macroeconomic reforms, the IBRD stimulates long-term investment in priority areas of the member's economies. While the Fund makes short-term loans available to Member

States facing balance of payments problems, the IBRD provides loans, guarantees, risk management products and advisory services to middle-income and creditworthy low-income countries (LICs).

21. Together the IBRD and the IDA are officially referred to as the 'World Bank'. The 'World Bank Group', however, also comprises three other legally and financially independent international organizations: the International Finance Corporation (IFC), which was established in 1956 to finance and promote sustainable private sector investments in developing countries; the International Centre for Settlement of Investment Disputes (ICSID), set up in 1966 to provide the institutional and procedural framework for the conciliation and arbitration of disputes between foreign investors and States; and the Multilateral Investment Guarantee Agency (MIGA), created in 1988 with a mandate to promote foreign direct investment in developing countries, offering political risk insurance to investors and lenders.

§2. The IMF and the WTO: Liberalization of Current Payments and Trade

22. Trade involves two primary transactions: the transfer of goods and services on the one hand and payments on the other. Trade and payments are therefore two sides of the same coin. Accordingly, for the regulation of trade and payments, the WTO and the IMF function as complementary institutions. On the one side, the WTO administers multilateral trade agreements, such as the GATT that is 'directed to the substantial reduction of tariffs and other barriers of trade and to the elimination of discriminatory treatment in international trade relations'. On the other side, in order to pave the way for trade liberalization, the IMF 'facilitates the expansion and balanced growth of international trade', *inter alia*, by promoting the removal of restrictions on international payments for current transactions (Article I). Payments for current transactions include 'all payments due in connection with foreign trade' (Article XXX). In short, the IMF administers rules that ensure that international payments for trade can be made freely.

23. The above suggests that for the smooth functioning of the international trading system, it is imperative that states become members of both the WTO and the IMF. The argument is that trade cannot be liberalized unless states fully accept the obligations of both institutions. WTO members cannot comply with the rules set forth by the GATT and other multilateral agreements on trade if they maintain exchange restrictions on current payments. This explains why there is substantive overlap of membership: practically all WTO members are also IMF members. However, the opposite question may also be asked. Can an IMF member fulfil its obligations without accepting the obligations under WTO law? In this case no conflict seems to exist. Current payments can be liberalized without accepting the obligations under the WTO to liberalize trade at the same time.

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Chapter 3. The IMF Articles of Agreement

24. The Fund's Articles of Agreements are summarized below. The Articles are elaborated in secondary legislation published in 'Selected Decisions and Selected Documents of the International Monetary Fund.' This publication holds decisions of the Executive Board, resolutions of the Board of Governors and agreements with other international organizations, such as the UN, the World Bank and the WTO. Documents on the internal functioning of the IMF are published in the 'By-Laws, Rules and Regulations of the International Monetary Fund'.

Introductory Article	Confirms the rule of law, determines the Fund's financial structure and principles for financial operations.
Article I	Defines the purposes of the Fund.
Article II	Explains conditions for membership.
Article III	Explains quotas and subscription; quotas determine the degree of participation in the Fund.
Article IV	Describes the essential purposes of the international monetary system and members' obligations and enables the Fund to oversee the international monetary system and exercise firm surveillance over exchange rate policies.
Article V	Describes the operations and transactions of the Fund; conditions governing the use of Fund's general resources and their scope; and balance of payments support. Enables the IMF to adopt specific policies on the use of its general resources for a set of specific balance of payments problems and to provide technical services, including the administration of resources contributed by members through trust funds; such additional activities must be consistent with the purposes of the Fund.
Article VI	Explains that the Fund is not designed to support 'large or sustained outflow of capital' and allows members to introduce capital controls.
Article VII	Authorizes the Fund to take measures to replenish the Fund's holding of scarce currencies and declarations on scarce currencies.
Article VIII	Determines members' obligations on current payments liberalization, discriminatory currency practices, currency convertibility and furnishing of information.
Article IX	Establishes the Fund's legal personality, immunity and privileges.
Article X	Imposes a duty on the Fund to cooperate with other international organizations.
Article XI	Deals with relations with non-members.
Article XII	Determines the Fund's governance structure, the mandate of each institution, the allocation and exercise of votes.

Article XIII	Determines the location of headquarters and designates central banks as depository for the Fund holdings of currencies; members must guarantee assets.
Article XIV	Allows for restrictions on current payments through a 'transitional arrangement'; the time frame of the arrangement is not limited.
Articles XV to XXV	Contains extensive provisions on special drawing rights (SDRs) explaining their purposes, general conditions for allocations, valuation and many more facets.
Article XXVI	Explains voluntary and compulsory withdrawal of members from the Fund and settlement of accounts.
Article XXVII	Allows for suspension of provisions in emergencies or unforeseen circumstances.
Article XXVIII	Contains provisions on amendments of the Articles.
Article XXIX	Explains the procedure for authoritative interpretations.
Article XXX	Interprets key provisions and terms.
Article XXXI	Contains the final provisions on entry into force.
Schedules A–M	Contains further elaborations of provisions (e.g., on quotas and suspension of voting rights).

Chapter 4. The IMF's Purposes

§1. Purposes Explained

25. The purposes of the Fund are stated in Article I. While amendments have resulted in considerable changes in the Fund's activities, they included only minor adaptations in the text of Article I. The purposes are explained as follows:

26. '(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.' This purpose underlines the monetary character of the IMF and creates a platform for both consultation and collaboration on monetary problems. It is important to note that the IMF is mandated to deal principally with international monetary problems, which may be considered as a segment of manifold problems in international economic relations. Key provisions to fulfil this purpose are to be found throughout the IMF Articles.

27. '(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.' This purpose refers to international trade, employment and real income. The expansion and balanced growth of these items are supposed to be primary objectives of all members of the IMF but not necessarily of the IMF per se. A note of caution must be added to the interpretation of this purpose: 'to facilitate' is not equivalent to 'to promote'. The Fund's task is to create an enabling environment – i.e., a stable monetary system – that removes obstacles for economic growth rather than to promote growth, which is a more straightforward obligation. Primarily, the IMF should be held accountable for a stable monetary system that paves the way for economic development. Moreover, 'to contribute thereby' underlines that high levels of employment and development of productive resources are merely desired consequences of the stability of the monetary system.

28. '(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.' Three objectives are mentioned here. The promotion of exchange stability indicates that the Fund has to play an active role in promoting stability in the exchange rates of currencies. Further, 'to maintain' orderly exchange arrangements among members and 'to avoid' competitive exchange depreciations assume that the Fund may exercise certain supervisory tasks vis-à-vis its membership. This purpose still has the imprint of the system of par values but was maintained, nonetheless, after its official abrogation by the Second Amendment in 1978. Article IV provides instruments through which the Fund communicates with and exercises surveillance over its members (on surveillance *see infra*, paragraphs 118 ff.).

29. '(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.' The Fund 'assists' in the establishment of a payments system and the elimination of foreign exchange restrictions. In practice, little contribution has been made to the creation of a payments system. Cross-border payments are administered through domestic and regional arrangements such as the Federal Reserve Wire Network (FEDWIRE) and the Trans-European Automated Real-time Gross Settlement Express Transfer system (TARGET2). However, the Fund has made a considerable contribution to the elimination of exchange restrictions by urging members to avoid restrictions on their current payments and return to full current account convertibility. The Fund administers the elimination of exchange restrictions under Article VIII subject to the transitional arrangements of Article XIV (*see infra*, paragraphs 157 ff.).

30. '(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.' Whereas balance of payment support was originally conceived as one of the methods to promote stability, it now has overshadowed other activities of the IMF. 'To give confidence' should be understood in the light of the original Articles. As was explained above, under the Bretton Woods system, members were expected to maintain a stable exchange rate, with the IMF giving members confidence that they could maintain their par value – even in times of monetary distress – by providing balance of payments support. Conditionality embodies the 'adequate safeguards' requirement (on which *see infra*, paragraph 277). Conditionality, in fact, provides assurance to the Fund that the country will be able to repay its loan and that resources will be made available to other countries. At the same time, it helps countries solve their balance of payments problems 'without resorting to measures that are harmful to national or international prosperity'. The meaning of 'measures destructive of national or international prosperity' has not been clarified in an authoritative interpretation of the Fund (on which *see infra*, paragraphs 94 ff.). From the general wording, it may be derived that 'destructive measures' refer to trade protectionism and exchange rate manipulation. Such measures were the ills of the Great Depression in the 1930s. Article V of the Articles elaborates on conditional balance of payments support and other operations and transactions of the IMF.

31. '(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.' This explains that the Fund contributes to the maintenance of equilibrium in the balances of payments of members and overall stability. Disequilibrium can be understood both as surplus and deficit in the balance of payments, but little attention has been paid to the need to address large surpluses.

32. Finally, the closing sentence stipulates that 'The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.' All activities should be developed within the framework of Article I. As argued below (*see infra*, paragraphs 101 ff.), this provision appears to support a preference for a teleological interpretation of the IMF Articles of Agreement.

§2. Object: Currency, Exchange Rates and Balance of Payments

33. The purposes of the IMF relate to the stability of the system of exchange rates and the balance of payments of members. The Fund's focus of concern vis-à-vis its membership and, correspondingly, the focus of obligation on the part of members, 'centres on the point and the terms of intersection of their national economies with each other – that is, the balance of payments, the exchange rate and the exchange system'.

34. The Articles clearly assume that IMF members have monetary sovereignty and exercise their own monetary policies. Throughout the Articles, member countries interact with the IMF by actions related to their currencies and exchange rates. The Fund will only communicate through the members' monetary authorities having the capability to use monetary instruments.

35. The key provisions of Articles IV and V support this argument. Under Article IV (as amended in 1978), each member undertakes 'to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates'. Also, 'the Fund shall exercise firm surveillance over the exchange rate policies of members'. Accordingly, members are required to notify the Fund on the 'exchange arrangement' that refers to a member's exchange rate policy. Furthermore, Article V entitles a member to 'purchase the currencies of the Fund in exchange for an equivalent amount of its own currency … after the member declares that it has a need to make the purchase because of its balance of payments or its reserve position'. Clearly, 'own currency' and 'balance of payments' are items over which members are expected to have control.

Chapter 5. Membership in the Fund

§1. Country-Based Membership

36. The IMF is a country-based organization. Pursuant to Article II of the IMF Articles of Agreement, membership is open to 'countries' in accordance with the terms that may be prescribed by the Board of Governors. The Articles do not define 'country', but practice suggests that only states can successfully apply for membership. With the accession of Nauru in 2016, membership has grown to 189 countries. The only countries that are not yet members of the Fund are Andorra, Cuba, Liechtenstein, Monaco and North Korea.

37. The reasons for using 'country' instead of 'state' as a criterion for membership are not entirely clear. One possible explanation is that the word is used to allow a 'country' to become an applicant, even though it could not yet be considered a state under international law. Formal statehood may also have been challenged because borders had not been delineated with finality or the applicant government controlled only part of the territory. For instance, Kosovo became a member of the IMF in 2009, before the International Court of Justice (ICJ) issued its advisory opinion regarding accordance with international law of the unilateral declaration of independence adopted by the Provisional Institutions of Self-Government of Kosovo.

38. Currently, only countries can become members of the IMF. It is likely that this is not due to statehood per se but rather to their inherent right to exercise monetary sovereignty. It is believed that the exercise of the sovereign right to issue a currency and formulate its monetary policy is decisive for membership. That sovereign right, though, might be surrendered to an international organization or to a currency union for which membership in the IMF is not permitted.

§2. Representation of the Euro Area

39. The European Union (EU) and its single currency may give reasons for discussion. Participants in the European Economic and Monetary Union (EMU) – not all the members of the EU are in fact also members of the EMU – share a single currency and have handed over the control of monetary policy and the conduct of foreign exchange operations to the European Central Bank (ECB) while retaining responsibility over economic policy decisions. The ECB is also entrusted with the task of holding and managing the common pool of reserves and of conducting all types of banking transactions with third countries and international organizations, including lending and borrowing operations. The EU also enjoys the ability to conclude international monetary and exchange rate agreements, to decide upon the external representation of the Euro area and, exceptionally, to restrict the flow of capital and payments.

40. The surrender of these competences to a supranational level is deemed to impair the ability of EMU members to fully discharge the duties, and exert the rights, arising from IMF membership. Hitherto, however, participants in the EMU have insisted that their membership in the IMF be continued. The key argument is that the IMF is a country-based organization and the EMU is not a country. It is unclear, however, how EMU participants can contribute to the IMF objectives after having dissociated themselves from monetary sovereignty. It seems rational to believe that the EMU, being the largest currency union, will sooner or later be accepted as a single IMF member. Many authors suggest that, should all EU members adopt the Euro, the EU will deserve to become a member of the IMF, either by substituting its members or by becoming an additional member. This question may be solved by amending Article II or by an authoritative interpretation under Article XXIX, thus clarifying that the term 'country' also includes currency unions.

41. Currently, coordination among Euro area Member States in the IMF decision-making bodies is achieved through a multi-layered structure of coordination revolving around the Subcommittee on the IMF (SCIMF) and the Eurogroup Working Group (EWG) in Brussels and the meetings of the IMF Executive Directors of the EU (the so-called EURIMF) in Washington. The IMF governance reform may facilitate the progressive streamlining of the EU representation in the Executive Board. Further developments are expected if the 2015 European Commission's proposal for a Council Decision for the progressive establishment of a unified representation of the Euro area in the IMF were adopted.

§3. Uniform and Preferential Treatment

42. The IMF Articles establish the same rights and obligations for all members of the Fund, therefore endorsing the principle of uniformity reminiscent of the doctrine of the equality of states under international law. Accordingly, the Fund is expected to prevent discrimination in favour of, or against, particular members, without regard to their economic strength or weakness. The fundamental approach is that each member has a balance of payments, that the balance of payments concept is the same for all members and that the degree of economic development does not justify a legal distinction. As a consequence, each member – developing, emerging or advanced economy – is entitled to draw on the Fund's resources.

43. Developing countries, in particular, have insisted on the principle of uniformity in order to ensure that they would be treated without discrimination. Occasionally, they have complained about the discriminatory application of rules on conditionality. It was believed in the 1970s that industrialized countries were treated more favourably when they requested balance of payments support. Developing members have also criticized the asymmetrical treatment between industrialized and developing members reflected in the soft law of Article IV (concerning surveillance over all members, on which *see infra*, paragraphs 118 ff.) and the firm law of Article V (balance of payments support, in most of the cases for developing members, on which *see infra*, paragraphs 249 ff.). They claimed that the virtual absence of compulsion in Article IV consultations stands in sharp contrast to the application of conditionality when the Fund provides balance of payments support.

44. Developing countries have not been satisfied with uniform treatment in all matters, asking for a differentiated and preferential treatment in certain instances. For example, they have attempted to make a linkage between SDRs allocations (on SDRs *see infra*, paragraphs 177 ff.) and the need for development assistance. However, proposals to insert this linkage into the 1978 Second Amendment were rejected because, if approved, it would have compromised the principle of uniformity. No mention of these issues is made in the Fourth Amendment on SDRs (*see infra*, paragraph 180).

45. Whereas the principle of uniformity still applies, it has been moderated by amendments and policies allowing for a more favourable treatment of developing countries. Under Article V, section 2(b) and Article V, section 12(f) trust funds and facilities (*see infra*, paragraphs 231 ff.) can be created for these countries only. The resources of these facilities are kept separate from the IMF General Resources Account (GRA) to which the principle of uniformity continues to apply.

46. Some political realities must also be accepted. The Fund's membership consists, on the one side, of a small group of economically powerful creditor countries and, on the other side, of a large group of economically vulnerable debtor countries. Because voting rights are based on economic strength, IMF policies are determined by wealthy countries but mainly apply to developing countries.

§4. Withdrawal

47. Any member may withdraw from the Fund at any time by transmitting a formal notice. Membership in the Fund may also be ceased by 'compulsory' withdrawal pursuant to Article XXVI, section 2. The latter measure may be taken if a member fails to fulfil any of its obligations under the IMF Articles. Before withdrawal will be enforced, a number of measures may be taken including a declaration on ineligibility to use the Fund's resources and suspension of voting rights. If, nonetheless, the member persists in non-observance of its obligations, procedures for forced withdrawal may start. In the process of withdrawal, operations and transactions with the Fund shall cease, and settlements of all accounts between the Fund and the member shall be made.

Chapter 6. IMF Quotas

48. Due to the fact that the IMF is a monetary institution offering financial support to members in financial distress, members' economic size cannot be ignored. When a country joins the IMF, it is assigned a quota on the basis of a formula. The member's quota broadly reflects its size and position in the world economy.

§1. The Quota Formula and the Review of Quotas

49. At the Bretton Woods Conference, the quotas of the US, UK, China and the Soviet Union (which later decided not to ratify the IMF Articles of Agreement) were determined at the highest political level, and the formula adopted to distribute quotas among the remaining countries was not circulated to country representatives.

50. After Bretton Woods, to determine the quotas of new members, the Fund kept applying the original formula with minor changes in the weights and the definitions of the variables (i.e., GDP, average monthly reserves, annual average current payments, annual average current receipts and variability of current receipts).

51. The quota formula has remained almost unmodified for decades, failing to keep up with the developments of the world economy. As a result, at the end of the millennium, emerging economies were de facto under-represented, since their quotas did not reflect their actual weight in the global economy (for instance, during the 1990s Belgium had a greater quota than Brazil or India).

52. The current quota formula – agreed in 2008 after years of discussions – is a weighted average of GDP (weight of 50%), openness (30%), economic variability (15%) and international reserves (5%) expressed in shares of global totals. Discussions on a new comprehensive review of the formula, however, are expected to continue, in particular in the context of the Fifteenth General Review of Quotas that will be completed in 2019.

53. General reviews of quotas are usually conducted every five years by the IMF Board of Governors. They provide an opportunity to realign quota shares with members' relative positions in the world economy and to assess the appropriate size and composition of the IMF's resources. Revisions in the quotas of each member are conducted to satisfy the requirement to periodically update the data used for their calculation and to reflect changes in the relative weight of member countries in the world economy. General reviews of quotas also assess the adequacy of IMF resources to finance its activities. If an overall increase in the IMF capital is needed, the Board establishes its size and decides on its allocation among members. Any variation in quotas must be approved by the Board of Governors with an 85% majority of the total voting power, and a member's quota cannot be changed without its consent. Members have to pay the Fund the increase in their quotas promptly.

54. The global financial crisis which started in 2008 raised demand for Fund resources. The issue was considered during the Fourteenth General Review of Quotas, which was completed in December 2010 (becoming effective, however, only in January 2016 once approved by the required majority). The Fourteenth General Review resulted in a doubling of quotas with total quotas resources rising from 238 billion SDR to 477 billion SDR (i.e., at the time of writing, about USD 677 billion or EUR 575 billion). A major realignment of quota shares was also decided: more than 6% of quotas shifted from over-represented to under-represented members, at the same time preserving the quota of the poorest members. As a consequence, Brazil, China, India and Russia are currently among the ten largest IMF shareholders, together with the US, Japan and the four largest European countries (France, Germany, Italy and the UK). As of December 2018, only five members (Eritrea, Micronesia, Somalia, Sudan and the Syrian Arab Republic) have not consented yet to their proposed quota increases under the Fourteenth General Review of Quotas. Two of them (Somalia and Sudan) are not eligible to consent to their quota increases due to protracted arrears to the Fund's GRA.

Distribution of Quotas after the 14th Quota Review	
US	16.52%
Japan	6.15%
China	6.09%
Germany	5.32%
France	4.03%
UK	4.03%
Italy	3.02%
India	2.64%
Russian Federation	2.59%
Brazil	2.22%
Other Members	47.39%

55. Quotas can also be adjusted on an ad hoc basis, outside general reviews, at the request of the member concerned. Ad hoc quota increases were undertaken in two occasions before the Fourteenth General Review of Quotas: in 2006, the quotas of four clearly under-represented countries (China, Korea, Mexico and Turkey) were increased; in 2008, the quotas of other fifty-four under-represented emerging economies and developing countries were increased to reflect changes in their relative positions in the world economy.

§2. The Multiple Roles of Quotas

56. The quota is a quantity, expressed in SDRs (on their nature and functions *see infra*, paragraphs 174 ff.), which establishes, among other things, the 'relative economic position' of IMF members. The amount of quota determines the extent of participation in the IMF and plays a fourfold role. The quota determines:

– the subscription of each member (i.e., the amount of financial resources the member is obliged to provide to the Fund);
– the number of voting rights of each member;
– the maximum extent of balance of payments support that each member may receive from the Fund; and
– the share of SDR allocations that each member receives from the Fund.

57. Quotas determine the maximum amount of financial resources a member is obliged to provide to the IMF. A member's subscription in the IMF is equivalent to its quota: 75% of it has to be paid in the country's own currency, and the remaining 25% in SDRs or in a widely accepted currency (usually the US Dollar, the Euro, the Yen or the British Pound). The subscriptions are held in the GRA and serve as a source of the IMF balance of payments support and lending.

58. The votes of each member are determined by the sum of 'quota-based votes' and 'basic votes'. Quota-based votes are proportional to the quota and amount to one vote for each fraction of the quota equal to hundred thousand SDRs. Basic votes are equally distributed among members so as to reflect the principle of equality of states and give also the smallest members of the Fund voice in its deliberations. They were intended as a counterbalance to the weighted voting system. Initially, the number of basic votes amounted to 250 per member, but to avoid erosion in voting shares of least-developed countries, the Fifth Amendment on Voice and Participation in the IMF (2011) established that they could not be less than 5.5% of all available votes. As a result, the ratio of total basic votes to total votes has become fixed, and basic votes are now adjusted automatically when quotas are increased.

59. For any form of balance of payments support, the upper limit of financial assistance is related to the quota of the requesting member. For instance, under the Stand-By and Extended Arrangements, a member may borrow up to 145% of its quota annually and not more than 435% cumulatively. These limits may be exceeded under exceptional circumstances. The available amount of financing also depends on the specific conditions of the member and the facility under which resources are made available. Part III discusses rules and policies on balance of payments support and the access policy.

60. The SDR is an international reserve asset created by the IMF that can be held by central banks of member countries or other designated holders to supplement their official reserves. The IMF may allocate SDRs to members in proportion to their IMF quotas. In 2009, when the Fourth Amendment became effective, a general and a special SDR allocation raised total cumulative SDR allocations to about 204 billion SDR. For more details on SDRs *see infra*, paragraphs 174 ff.

Chapter 7. The IMF's Institutional Structure

§1. The Board of Governors and the Ministerial Committees

61. The Board of Governors is the IMF plenary organ and normally meets once a year during the IMF-World Bank Annual Meetings. It consists of one governor and one alternate for each Member State. Member countries are represented by their finance minister or central bank governor. The Board is invested with all the powers within the IMF's jurisdiction, except those specifically assigned by the Articles to another organ. The Board of Governors may delegate to the Executive Board the authority to exercise its powers, except in certain reserved matters. The Board of Governors retains the following powers directly conferred upon it by the Articles; they concern: the admission of new members, the adjustment of quotas, the composition of the Executive Board, the allocation of SDRs, the suspension of members and the amendment of the Articles of Agreement. The quorum for any meeting is the majority of Governors having not less than two-thirds of the total voting power. Decisions are adopted by a majority of the votes cast by the Board members unless otherwise specified in the Articles. The Board of Governors is advised by two ministerial committees: the International Monetary and Financial Committee (IMFC) and the Development Committee.

62. In 1999, the IMFC replaced the Interim Committee of the Board of Governors on the International Monetary System which was established in 1974 after the collapse of the par values system. The IMFC is mandated to report and advise the Board of Governors on matters pertaining to: 'the management and adaptation of the international monetary and financial system, including the continuing operation of the adjustment process, and in this connection reviewing developments in global liquidity and the transfer of real resources to developing countries'; 'proposals by the Executive directors to amend the Articles'; and 'sudden disturbances that might threaten the system' (Resolution No. 54-9 of the Board of Governors, 30 September 1999). The IMFC is composed in the same way as the Executive Board and derives its authority from the fact that finance ministers or central bank governors sit on it. The IMFC meets twice a year, before the Spring meetings and the Annual IMF-World Bank Meetings. The Committee issues communiqués that provide guidance for the IMF's work programme; it operates by consensus, and it is not authorized to adopt decisions.

63. The Board of Governors may decide, by an 85% majority of the total voting power, to set up a Council that will take over the tasks of the IMFC. The Council will consist of Councillors – who shall be a Governor, Minister in the government of a member, or person of comparable rank, and Associates. The Council shall supervise the management and adaptation of the international monetary system, including the continuing operation of the adjustment process and developments in global liquidity, and in this connection shall review developments in the transfer of real resources to developing countries. The rules of procedure of the Council are elaborated in Schedule D of the Articles of Agreement.

64. The 'Joint Ministerial Committee of the Boards of Governors of the Bank and Fund on the Transfer of Real Resources to Developing Countries' (the so-called Development Committee) was established in 1974 by the IMF Board of Governors and the World Bank as a shared Committee. The Development Committee advises the Boards of Governors of the IMF and the World Bank 'on all aspects of the broad question of the transfer of real resources to developing countries' and 'shall give urgent attention to the problems of (i) the least developed countries and (ii) those developing countries most seriously affected by balance of payments difficulties' (Resolution No. 29-9 of the Board of Governors, as lastly amended in 2012). The Development Committee usually meets twice a year, after the IMFC meetings, and is composed of twenty-five members, usually represented by their ministers of finance or development.

§2. The Executive Board

65. Under Article XII, section 3(a), the Executive Board is responsible 'for conducting the business of the Fund' and disposes of all the powers conferred on it by the IMF Articles and those delegated to it by the Board of Governors. The Executive Board usually meets several times per week and adopts decisions by consensus, except when a formal vote is required. Pursuant to Article XII, the Board consists of twenty Executive Directors, but the Board of Governors has used its power to raise the number to twenty-four. The Managing Director serves as the chairman of the Executive Board.

66. Under the system originally envisaged by the Articles, each of the five member countries holding the largest quotas had the right to *appoint* its own Director. At the beginning of the New Millennium, these members were: the US, the UK, Germany, France and Japan. Members who had formed a voting group or a constituency *elected* the other nineteen Directors every two years. Some member countries were able to obtain a special position (China, Russia and Saudi Arabia), each of them forming a 'single constituency' and electing its own Director.

67. In 2016, the Board Reform Amendment (the Seventh Amendment) entered into force thus ending the category of appointed Executive Directors. Members with the five largest quotas and voting powers, therefore, no longer appoint an Executive Director each. Directors are currently all-elected by member countries or by a group of countries (constituencies). In practice, the US, Japan, China, Germany, France, the UK, the Russian Federation and Saudi Arabia were able to establish a single-state constituency each with a view to electing their own Executive Director; the other sixteen Directors are elected by constituencies made of multiple countries.

68. An Executive Director elected by a constituency is entitled to cast the number of votes that contributed towards his/her election and votes for the group as a whole: the votes of the constituency cannot be split in the sense that part of the votes is expressed in favour and another part against a decision. Elections are conducted every two years in accordance with regulations yet to be adopted by the Board of

Governors. Once adopted, these regulations will establish 'a limit on the total number of votes than more than one member may cast for the same candidate', i.e., they will set a limit on the pooling of votes in a constituency, so to avoid 'mega constituencies'.

69. The status of an Executive Director is somewhat ambivalent. The Executive Board should be seen as a 'body consisting of officers of the Fund and not as the "representatives" of the bodies that appointed or elected them'. Nevertheless, an Executive Director is in practice held accountable by 'his/her' country, even though the salary is paid by the Fund. During meetings in the Board, an Executive Director may explain that he is communicating the views of members, but he is not required to clarify whether or not he is expressing their views. If he is silent, he will probably reflect the views consistent with those of the members who elected him. The assumption that he is communicating their views may give muscle to his opinion, but only the position taken by the Executive Director when a decision is to be taken has legal relevance. An Executive Director who is elected by his own country will, in most cases, have no option but to defend the standpoint of his member country; an unsatisfactory answer may have consequences when it comes to re-election. An Executive Director who is elected by several member countries has more scope in determining his own point of view whenever he has to steer a middle course between possible differing opinions among the members of the voting group. If a member country calls its elected Director to account, he can hide behind the argument that he is voicing the point of view of the majority in the voting group.

§3. The Managing Director

70. The third main organ of the Fund is the Managing Director, who is the chairman of the Executive Board and the head of the IMF staff. Subject to the general control of the Executive Board, the Managing Director conducts the ordinary business of the Fund and is 'responsible for the organization, appointment, and dismissal of the staff' (Article XII, section 4(b)). The Managing Director and the staff of the Fund 'shall owe their duty entirely to the Fund and to no other authority'. The Managing Director presides over Executive Board meetings, without being entitled to vote. The role as chair of Board meetings is important since the Managing Director is required, if necessary, to summarize the 'sense of the meeting'. Summing-up may both be made public and be formally qualified as a decision of the Board. All contacts with member countries are maintained by the staff under instruction from the Managing Director. Article IV consultations, as well as negotiations with member countries requesting balance of payments support, take place as a result of the Managing Director's instructions. Proposals for decisions concerning balance of payments support are put to the Executive Board by the Managing Director.

71. Historically, the practice was to select a European citizen as IMF's Managing Director and a US citizen as President of the World Bank. Currently, the Executive Board appoints the Managing Director for five years according to an open, merit-based and transparent procedure first introduced in 2011. Nominations can be submitted both by Executive Directors and by Governors. Candidates should have an outstanding professional background. At the end of the nomination period, the names of nominees who have confirmed their candidacy are announced. The Executive Board meets with the shortlisted candidates and decides by consensus or by a majority of the votes cast. Christine Lagarde was appointed as the first female Managing Director in July 2011; she was reappointed for a second term in February 2016.

§4. Decision-Making

72. The basic principle is that IMF decisions – regardless of which organ adopts them – are taken by a majority of weighted votes. The IMF Articles require a qualified majority only for selected decisions. However, formal votes within the Board of Governors and the Executive Board are in practice avoided in order to circumvent political differences and to promote harmonious cooperation. Usually, the Managing Director establishes the 'sense of the meeting' rather than proceeding to a formal vote. In particular, the Managing Director plays a key role in the decision-making of the Executive Board by seeking a compromise between the different standpoints of the Directors. The political reality is that on important questions, the opinions of members with the highest quota cannot be disregarded.

73. The margin in determining opinions which the members of the Executive Board possess, together with the discretionary freedom of the Managing Director, means that a compromise can usually be reached. If the positions appear irreconcilable, the Managing Director shall indicate the majority opinion of the Board, while also including the dissenting minority viewpoints in the summing-up. Accordingly, the Managing Director will reflect discussions in the Executive Board and qualify the number of Directors that has expressed views according to the schedule below.

Qualifier	*Number of Executive Directors*
A few Directors	2–4
Some Directors	5–6
A number of Directors	6–9
Many Directors	10–15
Most Directors	15 or more
Significant minority of the Board or, in exceptional cases, required majority or a majority of the Board	Indication of necessary voting strength, particularly useful in cases of special majorities

However, if a member insists on a formal voting, then decisions will be taken by a majority of 70% or 85%, depending upon the subject. Decisions to be taken by special majorities are technical and based on provisions scattered across the Fund's

Articles of Agreement; decisions that affect the financial position of members are more likely to require an 85% majority. The US is the only single member able to block decisions that must be adopted by an 85% majority.

§5. Corpus Juris

74. The Board of Governors and the Executive Board derive their powers to issue rules and regulations from the IMF Articles. To exercise their powers, they have at their disposal a number of instruments. The Board of Governors issues By-Laws and Resolutions. The Executive Board adopts Rules and Regulations and other decisions. The category 'other decisions' includes: interpretations, recommendations, guidelines, resolutions and decisions relating to balance of payments support. The hierarchical ordering of the above-mentioned sources is subject to the following:

- The Articles of Agreement regulate the Fund.
- The By-Laws adopted by the Board of Governors are adopted under the authority of the Articles and are intended to be complementary to them; they mostly concern procedural questions.
- Resolutions of the Board of Governors are operational and include such matters as admission of new members and quota reviews.
- Rules and Regulations are adopted by the Executive Board to conduct the business of the Fund and supplement the IMF Articles and By-Laws; they are subject to review by the Board of Governors.
- Finally, the Executive Board has powers across a wide spectrum of issues to take what are usually termed decisions. A decision may never conflict with the IMF Articles; a decision of the Executive Board may not conflict with a decision of the Board of Governors.

75. The IMF Articles explicitly confer powers on the institutions and on 'the Fund'. Of particular importance is that the Board of Governors has delegated all but some explicitly conferred powers to the Executive Board. This means that where the IMF Articles mention 'the Fund', in practice this refers to the Executive Board. This assures the central role of the latter in most of the IMF's activities. Decisions concerning balance of payments support, Article IV consultations, the setting up of trust funds, the level of charges, the selling of gold and many other decisions are consequently made by the Executive Board.

§6. Legal Status, Privileges and Immunities

76. The Fund enjoys 'full juridical personality' towards its members. It has freedom to contract, to acquire and dispose of property and to institute legal proceedings. In addition, it enjoys immunity from judicial process, enforcement actions and taxation or customs duties. Its assets, archives and communication are protected against interference. The Fund has developed special procedures that are intended to ensure the physical safety of Fund staff and other officials and their families, thus discharging its duty of care obligation towards personnel.

77. The IMF has been granted the status of specialized agency within the meaning of Article 57 of the Charter of the UN. The Agreement between the UN and the IMF, as approved by the Board of Governors of the Fund and by the UN General Assembly (UNGA), entered into force on 15 November 1947. The Fund also enjoys protection under the United Nations Convention on the Privileges and Immunities of the Specialized Agencies. Under Annex V of the Convention, the privileges and immunities created under the Articles of Agreement shall not be diminished by the privileges and immunities under the Convention.

Chapter 8. IMF Accountability

§1. Membership and Constituency Accountability

78. The Fund claims that it is accountable to its membership and under the scrutiny of multiple stakeholders including news media, civil society, academia and its own internal watchdog, the Independent Evaluation Office (IEO). A distinction may be drawn between membership accountability and constituency accountability. Membership accountability means that the Fund is accountable for its actions as stipulated by the IMF Articles; any action (or non-action) must be explained to member countries. Accordingly, each member may ask the Fund to explain why an action is taken or not taken.

79. Constituency accountability refers to Directors in the Executive Board who take decisions based on the weighted voting system. Decision made by a majority of weighted votes means that the Fund is factually governed by a limited number of members and may only take action (or forbear to take action) when the Fund's Executive Board approves (or disapproves) such action. In this accountability relationship, the major industrialized countries may even steer the Fund into directions which could not be anticipated by the signatories of the IMF Articles. Practice has shown that compromises reached in the IMF Articles could be overruled by subsequent interpretative decisions adopted by the Executive Board. In practice, constituency accountability prevails over membership accountability.

80. Furthermore, exchange of information and views beyond membership are considered important aspects of IMF accountability. The Fund advocates that it actively seeks the input of the civil society and other stakeholders on its activities. Accordingly, the Fund claims it has developed a 'culture of listening and learning'. For the design of loan programmes, it seeks 'constructive dialogue with civil society organizations' in order to establish 'mutual understanding and increase support for reform'. The IMF Articles allow for the publication of reports 'as it deems desirable for carrying out its purposes' (Article XII section 7). The objective of the IMF transparency policy is to strengthen 'the Fund's effectiveness by providing the public with access to Fund views and deliberations, thus informing public debate and building traction for the Fund's advice, supporting the quality of surveillance and of programs, by subjecting the Fund to outside scrutiny, and enhancing the Fund's legitimacy by making the institution more accountable'.

81. A well-functioning international civil service is generally recognized to be an important element for accountability. Civil servants should strive for the highest standards or efficiency, competence and integrity. Principles of impartiality, loyalty to the aims and purposes, functional independence and discretion must be safeguarded. The ability to meet these standards is also dependent on the observance of members of their obligation to respect these principles.

82. The need for a staff of the highest quality in the IMF is beyond doubt. The staff is the prime contact for countries when discussing their economic and monetary policies. The staff reports to the Executive Board on the performance of individual members, provides technical assistance and forecasts developments in the global economy. Staff-missions also prepare decision documents when countries request balance of payments support. The Executive Board primarily relies on staff assessments and usually decides accordingly.

§2. The Independent Evaluation Office

83. In 2001, the Executive Board established the IEO with a view to promoting transparency and accountability as well as strengthening the IMF's external credibility. The IEO operates at arm's length from the Fund and is expected to critically review IMF's policies. The IEO is completely independent of the Fund's management and staff and is entitled to access any internal information and documents (with limited exceptions). The terms of reference are loosely formulated and allow the IEO to put in its work programme any subject that is important for the IMF's membership and relevant to the mandate of the Fund. For the selection of subjects, the IEO may consult groups inside and outside the Fund, including Non-governmental Organizations (NGOs), academic circles. Its work programme includes a variety of items ranging from evaluations of IMF activities in particular countries to assessments concerning the Fund's practice on structural conditionality. IEO evaluations are published online. Even if they do not have binding legal force, they proved to be an important instrument to enhance the learning culture within the Fund. Follow-up is critical, and to this end, the Executive Board usually approves a Management Implementation Plan which sets out the actions planned to implement Board-approved recommendations from IEO evaluations.

84. The IEO played an important role in reviewing the IMF performance in the aftermath of the global financial crisis. Three reports were particularly relevant: the 2011 'Report on the IMF Performance in the Run-Up to the Financial and Economic Crisis: IMF Surveillance in 2004-07', the 2014 'Report on the IMF Response to the Financial and Economic Crises' as well as the 2016 'Report on the IMF and the Crises in Greece, Ireland and Portugal' (on which *see infra*, paragraph 254). IEO evaluations are available on its website.

Chapter 9. The IMF's Financial Structure

§1. General Resources

85. IMF regular lending activities are financed from the fully paid-in capital subscribed by member countries. Quota payments are credited to the GRA: 25% of the subscription consists of SDRs or widely accepted foreign currency, while the remainder 75% is made up from the local currency, usually in non-interest-bearing, non-negotiable promissory notes, issued either by the member's central bank or by its treasury. As national currencies from all members form a substantial part of quota payments, not all resources pooled in the GRA are usable resources, i.e., usable to provide financial support to IMF members with a balance of payments need. 'Non-usable resources' are the currencies of members with a weak balance of payments or reserve position (generally currencies of developing countries or countries under an IMF programme). 'Usable resources' are the currencies of members in strong external positions. Roughly half of the quota payments constitute usable resources. For this reason, the Fund needs to increase its resources through multilateral and bilateral borrowing agreements and by selling its gold holdings.

§2. Additional Borrowing: Multilateral and Bilateral Loan Agreements

86. Because resources in the GRA may prove to be inadequate, the Fund is authorized to borrow to supplement those resources. As financial emergencies will occasionally surface – as it has indeed happened in the past and more recently with the global financial crisis – the Fund might have to rely on additional borrowing to boost its lending capacity. Currently, the Fund relies both on multilateral and bilateral loan arrangements in order to be able to provide lending to its member countries. These standing borrowing arrangements create credit lines between the Fund and major industrialized countries. They provide therefore a temporary supplement to quota resources.

87. The first multilateral loan agreements, the General Arrangements to Borrow (GAB) was signed in 1962 by the G-10 industrialized countries and Switzerland. The objective was to assist the Fund in supporting the balance of payments needs of any member of the group or in addressing a threat to the stability of the international monetary system. The GAB was activated ten times and the last time in 1998 by Russia, shortly before the New Arrangements to Borrow (NAB) became effective. Credit available under the GAB amounted to 17 billion SDR. In 2017, participants unanimously agreed not to renew the GAB at the end of 2018 given its diminished usefulness as a backstop against potential systemic shocks.

88. In 1997, in the aftermath of the Mexican financial crisis, the IMF Executive Board adopted the decision to establish the NAB, which became effective in 1998. Today, the NAB is a standing set of credit lines under which forty member countries (Greece and Ireland were the last to join the group) have committed to provide supplementary resources to the IMF. In 2011, during the global financial crisis, the NAB was amended and expanded (resources available under the NAB increased from 34 billion SDR to 370 billion SDR). In the context of the Fourteen General Review of Quotas, however, NAB members agreed to transfer resources from NAB to quotas in order to pay for their respective quota increases. As a result, the NAB was 'rolled back' to 182 billion SDR (approximately USD 264 billion). The NAB can be activated by a proposal of the Fund's Managing Director accepted by NAB participants representing 85% of total credit arrangements; approval of the Executive Board is also required. The NAB was activated ten times since 2011 and lastly in April 2014. The NAB was renewed until November 2022.

89. The IMF may also temporarily supplement its resources through bilateral borrowing agreements. In 2012, the Fund had sixteen active bilateral loan agreements worth about USD 200 billion and two active bilateral note purchase agreements for about USD 60 billion. In 2013, the Executive Board approved termination of any further drawings under these bilateral borrowing and note purchase agreements, which were concluded prior to the activation of the new NAB. In 2016, taking into consideration the continued uncertainty in the global economy, the Executive Board approved a new temporary framework for bilateral borrowing and adopted the Guidelines for Borrowing by the Fund. In this context, forty bilateral borrowing agreements were concluded by the Fund, for a total commitment of about 316 billion SDRs. Activation of bilateral agreements requires support from 85% of the lenders eligible to vote.

§3. Gold in the IMF

90. Apart from currencies and SDRs, the Fund holds substantial amounts of gold. This has historical reasons: in fact, until the breakdown of the par values system in the early 1970s, members could pay part of their quota subscription in gold. The Fund also received gold as a repayment of loans or through other channels such as payments of charges (interest on members' use of IMF credit). In 1975, the official price of gold was abolished, and its role in the international monetary system changed drastically. In 1978, the Second Amendment prohibited its use as the common denominator of the post-World War II par value system and as the basis of the SDR value. The Fund was also prohibited from managing or fixing its price when dealing in gold or buying it.

91. Today, the Fund remains one of the largest official holders of gold. From time to time, members authorize the Fund to sell part of its gold reserves to replenish holding of currencies. In 2009, the Executive Board approved the sale of one-eighth of the Fund's total holdings of gold to boost resources and, in particular, to provide additional financing for poor countries through trust funds. Gold sales were conducted with specific modalities to avoid market disruption. In 2012, the Executive Board decided to distribute to the membership, in proportion to quota shares, the windfall profits earned from gold sales; simultaneously, members pledged to transfer at least 90% of the amount received to the Poverty Reduction and Growth

Trust (PRGT, on which *see infra*, paragraph 241) so to increase its annual lending capacity to LICs and its long-term sustainability. The Heavily Indebted Poor Countries Initiative (HIPC) (on which *see infra*, paragraph 202) was partly financed by the sale of gold against market prices.

§4. The Fund's New Income Model after the Fifth Amendment

92. In order to fund its administrative expenditures and its non-lending activities, the IMF has always relied on its lending income (interest on loans, commitment fees and service charges levied on the use of credit from the GRA). In 2006, following a deterioration of the IMF income position, various measures were taken to allow the Fund to diversify its sources of income. Among these, the Fifth Amendment to the IMF Articles of Agreement (which entered into force in February 2011) modified Article XII, section 6(f)(iii) to broaden the investment mandate of the Fund. The purposes of the changes introduced were to ensure the long-term sustainability of the Fund's finances and to make it less dependent on borrowing from Member States and on earnings deriving from its lending activities. Under the new income model, the Fund is allowed to invest part of its resources in fixed-income securities and short-term deposits to generate returns exceeding the SDR interest rate. More specifically, the Fund can purchase 'directly in the cash markets' obligations issued by member countries and other international financial institutions.

93. The Investment Account of the IMF is divided into three different subaccounts. It holds resources transferred from the GRA, which are to be invested to broaden the IMF's income base. The earnings generated by the Investment Account may be invested, retained in the account or transferred to the GRA to meet the expenses of conducting the business of the IMF. The prudent risk profile of the Fund enables it to invest only in: (a) debt obligations issued by national governments of Member States or their central banks; (b) debt obligations issued by national agencies of the members whose currencies are in the SDR basket; (c) debt obligations issued by international financial institutions; and (d) obligations issued by the Bank for International Settlements (BIS). All the above-mentioned obligations have to be denominated in SDR or in the currencies included in the SDR basket. The assets in the IMF Investment Account are managed by external operators with a clear separation of responsibilities from the IMF management. Credit risk is further minimized by restricting investments to financial instruments with a credit rating at least equivalent to A, based on the Standard & Poor's rating scale; if the rating threshold is breached, assets shall be divested within three months from the rating downgrade. The consequence is that the Fund's external investment managers will be compelled to sell financial instruments in their portfolio as soon as these go below the rating threshold. The Rules and Regulations for the Investment Account were lastly revised in March 2018. Decisions on how to use the Investment Account income are taken by the Executive Board every financial year.

Chapter 10. Rules for Interpretation

94. Questions on the interpretation of the IMF Articles may be addressed first by the Fund's Executive Board. By adopting an authoritative interpretation, the Board may not only clarify the meaning of the Articles of Agreement but also, in fact, settle a dispute. A member may, for instance, challenge a policy of the Fund and insist on another interpretation of the provision underlying that policy. Second, interpretation may also be asked from the ICJ through an advisory opinion. Third, the Fund's practice also allows for non-authoritative interpretations.

§1. Authoritative Interpretation under Article XXIX

95. Article XXIX(a) provides that 'any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between members of the Fund shall be submitted to the Executive Board for its decision'. The procedure set forth by Article XXIX(b) provides for an appeal to the Board of Governors, which shall be assisted by a Committee on Interpretation of the Board of Governors. Once an interpretation is adopted by the Board of Governors, the decision is binding and final. The procedure has two characteristics. First, the composition and equal division of voting rights of the Committee on Interpretation is noteworthy. The principle of one vote for each member is the only exception to the weighted voting system in the IMF. Second, the language of Article XXIX(a) suggests exclusiveness of the right of interpretation: any question 'shall be submitted'.

96. In the first years, the procedure was used around ten times, and the adopted decision explicitly referred to the interpretation clause. On one occasion, the legal channel under paragraph (b) was used, and the Board of Governors was involved in the interpretation. The last interpretation was given in 1959. It is puzzling why conflicts between the Fund and particularly developing members, which surfaced in the 1960s and 1970s, have not resulted in requests for interpretations under Article XXIX. It might as well be that, despite criticism, countries did not disagree on the interpretations that the Fund applied or that they believed that an authoritative interpretation would not lead to different outcomes.

§2. Advisory Opinion from the ICJ

97. The second formal avenue for interpretation is provided by the Agreement between the UN and the IMF, according to which the Fund is authorized 'to request advisory opinions of the International Court of Justice on any legal question arising within the scope of the Fund's activities … '. It is obvious that the ICJ will also have to interpret the Fund's Articles when it is asked to deal with a legal question within the Fund's scope. In addition, the ICJ's reach for interpretations has fewer limitations than the Fund's competence under Article XXIX. The Court may also discuss legal questions not directly relating to the Articles but that fall, nevertheless, within the Fund's scope of activities. Thus, if the IMF wishes to consider rules of international law in its decisions on balance of payments support, it can ask the Court for advice. The Court may also be requested to delineate the Fund's jurisdiction vis-à-vis other institutions in the UN system, through the application of the 'principle of speciality'. Hitherto, the IMF has refrained from asking for an advisory opinion of the Court.

§3. Non-authoritative Interpretation

98. Article XXIX states that 'any question of interpretation' of the IMF Articles shall be subject to the interpretation procedure. Nevertheless, the great majority of interpretative decisions are taken outside Article XXIX. Non-authoritative interpretations cover a broad range in the Fund's activities. Decisions and policies of the organs or even statements made by the Managing Director are interpretations because they are all supposed to act within the jurisdiction of the IMF and the competences allocated to its organs. In a material sense, authoritative and non-authoritative interpretations are equivalent; differences are of a formal nature and concern the irreversibility of a 'final' decision by the Board of Governors under Article XXIX. Moreover, decisions that do not fall under Article XXIX can include interpretations of provisions other than provisions of the IMF Articles, such as By-Laws.

99. Avoidance of Article XXIX interpretations means in particular that the Board of Governors is largely relieved of its involvement in the interpretation procedure. Both the Fund and the members have been swayed by considerations of flexibility, and both want to limit the number of irreversible decisions. Informal interpretations do not in any way infringe members' rights: a member may still request an explanation, with explicit reference to the interpretation clause under Article XXIX.

100. The Fund's neglect of the authoritative procedure for interpretations and its resort to informal procedures are controversial. However, given that not a single member has contested the legality of interpretations outside Article XXIX, it is unrealistic to insist that all interpretations should fall within Article XXIX.

§4. Principles of Treaty Interpretation

101. Generally recognized rules of treaty interpretation, as codified in Article 31 of the 1969 Vienna Convention on the Law of Treaties, are not entirely applicable because the IMF does not strictly follow the hierarchy of techniques that the law of treaties prescribes. Instead, the Fund's rules for interpretation have been tailored by applying multiple techniques for interpretation.

102. First, there appears to be a preference for the teleological approach because the closing sentence of Article I stipulates that 'the Fund shall be guided in all its policies and decisions by the purposes set forth in this Article'. Therefore, it is held that the *travaux préparatoires* play a more important role than Article 32 of the Vienna Convention appears to support. Whereas the Vienna Convention allows for recourse to the *travaux* only when the result is ambiguous, obscure or leads to a manifestly absurd or unreasonable result, interpreters of the IMF Articles should consider the *travaux préparatoires* anyway.

103. However, it can be inferred from the Fund's practice that interpretation does not fundamentally depart from the general rules of the Vienna Convention. Because there may be a need for a more equitable balance of various methods, interpretations based on ordinary meaning, teleology and *travaux préparatoires* should each be given their proper role.

Chapter 11. Amendments

104. Article XXVIII provides for an amendment procedure by which at least three-fifths of the members, having 85% of the total voting power, must accept a proposed amendment. Applying this procedure, the Articles of Agreement have been amended several times to adapt to changing global conditions and the desired degree of cooperation.

105. Amendments of the IMF Articles have entered into force in 1969, 1978, 1992, 2009, 2011 and 2016. In 1969, the First Amendment created the option for the Fund to introduce SDRs to supplement monetary reserves and in this way to help meeting a long-term global need to augment the total of world reserves. Through the First Amendment stricter rules on conditionality were adopted, thus introducing a firmer scrutiny over members' requests for balance of payment support and mandating the Fund to apply 'adequate safeguards' for the temporary use of its resources (Article I(v) and Article V, section 3(a)) (*see infra*, paragraphs 223 and 277). In addition, the First Amendment improved the authoritative procedure for interpretation by the introduction of a Committee for Interpretation.

106. The Second Amendment of 1978 brought a fundamental change. The new Article IV titled 'Obligations Regarding Exchange Arrangements' reflected the changing practice of IMF members with respect to their exchange rate policies. The amendment formally brought an end to the system of par values by allowing members to freely choose the exchange rate policy they deemed fit. A system of supervision was introduced, supported by provisions that can be described as soft law. The end of the par value system meant that the Fund ceased to administer 'a system of stable exchange rates', assuming instead the responsibility 'to promote a stable system of exchange rates'. This reflected a different role of the IMF: from the custodian of the par value system to supervisor of members' exchange rate policies. Other changes concerned the decreasing role of gold and the promotion of the SDR as the principal reserve asset in the monetary system. Moreover, according to the new section 1 of Article IV, one of the primary objectives of the Fund became 'the continuing development of the orderly underlying conditions that are necessary for *financial* and economic stability [emphasis added]'. This is the only reference made to financial stability in the IMF Articles.

107. The Third (1992), Fourth (2009), Fifth and Sixth Amendments (2011) respectively introduced:

– new rules for the suspension of voting rights for members failing to repay the Fund (as a reaction to the problem of the growing arrears to the IMF);
– new rules providing for a special one-time allocation of SDRs to allow all participants in the SDRs Department to receive an equitable share of cumulative SDR allocations;
– new rules expanding the investment authority of the Fund and authorizing the Fund to manage the proceeds of gold sales; and

– a reform of the Executive Board regarding the appointment of Alternates and a tripling of basic votes, which occurred together with a realignment of quota and voting shares of member countries (the so-called Voice and Participation Amendment).

108. The Seventh Amendment (the so-called Board Reform Amendment) established an Executive Board consisting solely of elected Executive Directors. It entered into force in January 2016 after the US Congress eventually adopted legislation to authorize the 2010 Quota and Governance Reforms.

Part II. Management of the International Monetary System

Introduction

109. The international monetary system has been described as the economic, institutional and political environment which aims at delivering international monetary stability. In particular, it consists of the set of rules, conventions, policies and institutional agreements governing official actions and policies affecting: exchange rate regimes and the rates at which foreign exchange is purchased and sold; arrangements related to monetary reserves and global liquidity; the convertibility of currencies, the making of payments and transfers for current international transactions; international capital movements; and global, regional and bilateral surveillance arrangements.

110. The current international monetary system is drastically different from the post-war one. The post-war system, in fact, was internationally negotiated at the Bretton Woods Conference and had a strong institutional architecture. It was centred around the gold exchange standard and the obligation of IMF members to establish a par value for their currency, either directly in terms of gold or indirectly in terms of US Dollars (*see supra*, paragraphs 11 ff.). Due to changes in the world economy and US policies, the 'system of stable exchange rates' collapsed in the early 1970s, and it was followed by a more flexible system of exchange rate management that was codified in the 1978 Second Amendment to the Articles of Agreement (*see supra*, paragraph 14).

111. A major characteristic of the current international monetary system is the freedom of IMF members to choose the exchange rate policy they deem appropriate. The current system has also been described as a 'non-system', decentralized in multiple currencies linked by a complex matrix of floating and fixed exchange rates regimes. Over time, the international monetary system has evolved into a patchwork of different approaches to exchange rate policy, in contrast to the uniformity of the Bretton Woods system. Many large developed countries with open capital markets now let their exchange rates float freely, while smaller and less developed countries tend to peg or heavily manage their exchange rates. Some emerging and developing economies still combine managed exchange rates with restrictions on capital flows. Moreover, while the post-war economic order was based on restricted capital flows, nowadays – in view of their liberalization, size and impact – they have become an integral part of the international monetary system.

112. Currently, the international monetary system is managed first and foremost by the IMF, national monetary authorities (central banks) and treasuries. Attempts to promote international monetary policy coordination are also taken outside the IMF, by intergovernmental groups (Gs) of leading economies. In the aftermath of the global financial crisis, the Group of Twenty – especially through its Finance Ministers and Central Bank Governors meetings (on the G-20, *see infra*, paragraph 331) – started to play a greater role in promoting international cooperation to achieve the common goal of building a more stable and resilient monetary system. International monetary cooperation, however, is extremely difficult to achieve and maintain, being the global monetary system founded upon globally competing monetary monopolies and sovereign rights. Finally, it should be kept in mind that the international monetary system exists in strong connection with the international financial system which is dominated by private – instead of public – actors.

Chapter 1. Exchange Rate Arrangements

113. After the demise of the par value system, IMF members became free to choose the exchange rate regime they considered most appropriate to their needs. The variety of exchange rate regimes has changed the patterns of international monetary collaboration. The IMF has not been able to respond adequately to such developments due to institutional limitations or political inertia. Some of the said regimes (like currency or monetary unions) may constitute an alternative to the traditional concept of monetary sovereignty, i.e., a state that maintains its own currency and pursues its own monetary policy under the supervision of the IMF.

114. According to the 2017 Annual Report on Exchange Arrangements and Exchange Restrictions (AREAER), exchange rate regimes can be classified in: hard pegs (exchange arrangements with no separate legal tender – i.e., currency unions – and currency boards), soft pegs (conventional pegged arrangements, pegged exchange rates within horizontal bands, stabilized arrangements, crawling pegs and crawl-like arrangements), floating regimes with market-determined rates (floating and free floating) and managed arrangements.

115. A major development was the creation of the EMU in the EU. A reason for introducing a single European currency was the desire to create a single market in which exchange rate fluctuations that might impede the free flow of trade are eliminated. Under the EMU, states have surrendered to the ECB their sovereign right to issue a currency and to pursue monetary policies independently. National currencies were replaced by the Euro, managed by the first supranational central bank, the ECB. The Euro monetary policy is determined by the ECB (whose target is price stability), while exchange rate policies are defined by the EU Council of Finance Ministers. It is significant that the EMU and its central bank, as key players in international monetary relations, are placed under IMF supervision through annual Article IV consultations on Euro area policies (on which *see infra*, paragraphs 384 ff.). As the EU or its monetary component, the EMU, are not (and are not entitled to become) IMF members, the ECB was only recognized observer status at selected Executive Board meetings. Few other regional monetary unions are currently in place: the Central African Economic and Monetary Community, the Eastern Caribbean Currency Union and the West African Economic and Monetary Union.

116. A second development has been the emergence of currency boards. Under a currency board regime, the monetary authority is required to maintain a fixed exchange rate between the domestic currency and a foreign currency. Conventional objectives of monetary policy are thus subordinated to the exchange rate target. The foreign currency reserves must be sufficient to ensure that all holders of domestic banknotes and coins can convert them at a fixed rate into the reserve currency. A direct consequence is a limitation to create money by extending credit to the government and the banking system. A major reason for introducing currency boards is a firm commitment to control inflation and to restore international confidence in the domestic currency. The right to exchange domestic currency for a foreign currency under a currency board system may be suspended or abolished once the domestic economy is sufficiently strong. Argentina was forced to abandon its currency board regime in 2002 when, hit by a severe recession, it defaulted on its sovereign debt. Hong Kong operates a currency board against the US Dollar.

117. A third development is the (de facto or de jure) dollarization/euroization of countries, meaning that the domestic currency is replaced by the US Dollar, the Euro or another key currency. De facto (or unofficial) dollarization is a phenomenon of currency substitution, which can be defined as the holding of cash, assets or liabilities denominated in a foreign currency by residents, primarily to preserve the store-of-value function of money. Through de jure (official) dollarization/euroization, a country recognizes legal tender status to the dominant foreign currency and entirely depends on the policies pursued by foreign monetary authorities. Whereas the advantages are clear – moderate inflation and a fully convertible currency – the disadvantages may be considerable. A dollarized/euroized economy loses its ability to control liquidity and interest rates and thus its capacity to respond to economic cycles. For instance, it is not expected that the US monetary authorities will take economic developments in dollarized economies into consideration when monetary policy objectives are formulated.

Chapter 2. Surveillance

118. A core responsibility of the IMF is to oversee the international monetary system and monitor developments in the economic and financial policies of its members with a view to identify potential risks to stability. This process, known as 'surveillance', takes place at bilateral, regional and global (or multilateral) levels.

119. Bilateral surveillance entails comprehensive consultations with individual members (the so-called Article IV consultations). In fact, Article IV, as modified by the 1978 Second Amendment, details the obligations of member countries with respect to exchange rates stability. To secure stability within the system, the Fund would enter into consultation with each member and exercise 'firm surveillance' over their exchange rate policies.

§1. Article IV: 'Obligations Regarding Exchange Arrangements'

120. Article IV, section 1 establishes the general obligations of member countries concerning their exchange arrangements. Member countries are obliged to cooperate with the IMF and other members in order to ensure orderly exchange arrangements and to promote a 'stable system of exchange rates'. Such cooperation should take place in the light of 'a framework that facilitates the exchange of goods, services and capital among countries, and that sustains sound economic growth'. Cooperation is considered indispensable for the continuing development of the orderly underlying conditions that are necessary for financial and economic stability.

121. Section 1 of Article IV contains four prescriptions. The first two prescriptions are expressed in a soft law language and are related to domestic policies with an impact on the exchange rate. States are asked: '(i) to endeavor to direct [their] economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability'; and '(ii) to seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions'. The other two prescriptions are mandatory in nature and related to the operation of the international monetary system. Member countries have to: '(iii) avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members'; and have to (iv) 'follow exchange policies compatible with the undertakings [mentioned above]'.

122. Whereas section 1 generally requires the Fund and its members to collaborate, the problem is that diverging views exist, within and outside the IMF, on the appropriate policies required for the promotion of monetary stability. Depending on the economic conditions, the IMF may urge members to revalue, devalue or float their currency, but it may also make its resources available to maintain fixed exchange rates. Economists may even argue that any exchange rate regime can work, provided it is backed by sound economic fundamentals. The obligation to cooperate applies to each and every member of the IMF regardless of whether the member has a surplus or a deficit in its balance of payments. Cooperation also includes the willingness to provide information to and receive advice from the Fund.

123. Section 2(a) refers to 'exchange arrangements', i.e. to the decisions of national monetary authorities on the exchange rate policy of the domestic currency. Section 2(b) explains that the domestic currency can, for example, be pegged to another currency or a basket of currencies (like the SDRs). Section 2(b) also anticipated the formation of the so-called European snake in the tunnel and the subsequent European Monetary System (EMS). In the EMS, established in 1979, most of the European Economic Community (EEC) members linked their currencies to the European Currency Unit (ECU) to prevent large exchange rate fluctuations relative to one another. All the other categories of exchange arrangements are available. Section 2(b), however, clearly presumes that, except for members of a currency union, each country will retain its sovereign right to issue and manage its own currency.

124. Section 3 empowers the Fund to exercise its oversight authority not only through bilateral surveillance but also through multilateral surveillance. Through bilateral surveillance, the Fund exercises 'firm surveillance' over the exchange rate policy of the members and lays down specific principles to which members must adhere. Through multilateral surveillance, the Fund monitors the developments in the international monetary system in order to ensure its effective operation; multilateral surveillance concerns developments in the world economy and in international markets as well as economic linkages and policy spillovers among countries.

§2. Bilateral Surveillance: The 1977 and 2007 Executive Board Decisions

125. The bilateral surveillance framework is under constant review, and various policies have been developed for its improvement since the Decision on Surveillance over Exchange Rate Policies was first adopted in 1977. Traditionally, in its consultations with a Member State, the Fund has primarily focused on macroeconomic imbalances, combating inflation, trade liberalization and other market reforms. Progress in understanding the problems underlying economic instability has brought the Fund to expand its jurisdiction under Article IV. The causes for economic instability are now increasingly associated with poor economic or financial policies, as well as political deficiencies and other shortcomings. Thus, the Fund has adopted policies promoting transparency, sound institutional structures and 'good governance', including the combating of corruption (*see infra*, paragraphs 310 ff.). More recently, the Fund has increased its attention to financial sector issues. Surveillance may also focus on social issues and labour markets, income distribution and environmental aspects. Accordingly, the Fund's staff has published reports and studies on unproductive public expenditure and excessive military spending. However, the efficient allocation of resources and priorities in government expenditure are normally not within the Fund's mandate and continue to remain within the jurisdiction of member countries.

126. The first decision on bilateral surveillance was adopted in 1977, but it was applied only after the entry into force of the Second Amendment in 1978. According to the so-called Surveillance Decision (IMF Executive Board Decision No. 5392-(77/63), 'Surveillance over Exchange Rate Policies', 29 April 1977), 'surveillance of exchange rate policies shall be adapted to the needs of international adjustment as they develop' and the 'Fund's appraisal of a member's exchange rate shall be based on an evaluation of the developments in the member's balance of payments, including the size and sustainability of capital flows, against the background of its reserve position and its external indebtedness'. Developments in the capital account situation might have indicated the need for bilateral consultations between the IMF and a member. These consultations were prescribed in particular following: 'the introduction or substantial modification for balance of payments purposes of restrictions on, or incentives for, the inflow or outflow of capital; or the pursuit, for balance of payments purposes, of monetary and other financial policies that provide abnormal encouragement or discouragement to capital flows'. In principle, the 1977 Decision neither favoured nor encouraged capital liberalization, but ever since issues related to capital flows were systematically included in Article IV bilateral consultations.

127. The 1977 Decision was periodically revised to reflect changes in the world economic and financial system. In 2007, the Executive Board decided to replace the 1977 Surveillance Decision to update guidance to both the Fund and its members regarding their obligations under Article IV. The new 2007 'Decision on Bilateral Surveillance over Members' Policies' (IMF Executive Board Decision No. 13919-(07/51), adopted 15 June 2007) introduced the concept of 'external stability' and clarified that country surveillance should have focused on assessing whether national policies promote domestic and external stability. External stability was, in fact, considered critical to achieve systemic stability and it was defined as 'a balance of payments position that does not, and is not likely to, give rise to disruptive exchange rate movements', therefore encompassing developments both in the current and the capital account. Accordingly, discussions focused on monetary, fiscal, financial and exchange rate policies, assessing risks and weaknesses.

§3. Strengthening Surveillance: the 2012 Integrated Surveillance Decision

128. In July 2012, following the completion of a Triennial Surveillance Review, the IMF Executive Board adopted a new decision on bilateral and multilateral surveillance, and the 2007 Surveillance Decision was repealed. The so-called 2012

Integrated Surveillance Decision (IMF Executive Board Decision No. 15203-(12/72), 'Bilateral and Multilateral Surveillance', 18 July 2012) further strengthened IMF monitoring activities.

129. The 2012 Integrated Surveillance Decision recognizes that systemic stability is most effectively achieved when a member promotes not only its own balance of payments stability but also domestic stability. According to these premises, the Decision adds guidance on the conduct of members' domestic policies that are relevant to domestic stability, filling an important gap of the 2007 Decision (*see* the new Principle E: 'A member should seek to avoid domestic economic and financial policies that give rise to domestic instability'). For greater clarity, the term 'external stability' used in the 2007 Decision was replaced with 'balance of payments stability'. In addition, by integrating bilateral and multilateral aspects in Article IV consultations, the new surveillance framework enables the Fund to better assess spillovers and global and country level risks to economic and financial stability. Accordingly, the new Decision allows the Fund to discuss with individual members the full range of spillovers from their economic and financial policies on global stability.

130. The 2015 'Guidance Note for Surveillance under Article IV Consultations' further directs the Fund's staff in its contacts with members. It identified five key areas to focus on in order to enhance surveillance: risks and spillovers, fiscal policy, macro-financial analysis and monetary policy, balance of payments stability, structural policies and data adequacy. According to the Guidance Note, stability is the organizing principle of surveillance. Article IV consultations should discuss spillovers from members' economic and financial policies that may significantly affect global stability, including alternative policy options minimizing their impact. Surveillance should also focus on risk analysis covering both domestic and external risks and on assessing their probability and likely impact on other countries.

131. From a more practical point of view, the relationship between the Fund staff and member countries is reflected in a list of best practices for Article IV consultations that should 'permeate all aspects of surveillance work':

– *Collaboration*. Surveillance is based on dialogue with country authorities and other stakeholders as well as persuasion. While this dialogue should be continuous, it is particularly important to seek country authorities' opinion on issues of their interest before an Article IV consultation. Staff can also draw on the expertise of other international institutions.
– *Candour*. Effective dialogue requires candour, both in discussions with country authorities and in staff reports, including about risks.
– *Even-handedness*. Surveillance should be even-handed, whether economies are large or small, advanced or developing, and pay due regard to country circumstances.
– *Practicality*. Staff advice should take into account country-specific circumstances and implementation capacity.

– *Forward-looking*. Staff reports and discussions should be based on realistic projections and discuss current and medium-term objectives and policies and possible policy responses to the most relevant contingencies.
– *Multilateral perspective*. Where relevant, Article IV consultations should discuss potential or actual spillovers as required by the Integrated Surveillance Decision and can draw from experiences in other countries.
– *Selectivity*. While the Guidance Note presents the issues in a comprehensive manner, staff should not view it as a prescriptive list. Reports should be focused and selective, except for certain issues that must routinely be covered. Rather, country teams should exercise judgment in selecting issues for in-depth coverage, and take a risk-based approach, leveraging the expertise of functional departments and other institutions.
– *Timeliness*. To ensure that Article IV staff reports are up-to-date when discussed at the Board and published, staff should minimize the time between the end of discussions with authorities and the Board meeting.

§4. The Modalities of Surveillance

132. According to the 2012 Integrated Surveillance Decision, bilateral and multilateral surveillance are mutually supportive and reinforcing and need to be operationally integrated. Therefore, the Decision sets forth modalities which are mostly applicable both to policy discussions in the context of bilateral and multilateral surveillance.

133. Article IV *bilateral* consultations take place according to well-established procedures. An IMF mission is sent to the member country to meet with government and central bank officials and collect economic and financial data. Discussions are intended to assist the country in making policy choices through an open dialogue and on the basis of mutual trust. Assessment and advice are formulated paying due regard to the circumstances of the country and its implementation capacity. Moreover, the Fund is under the obligation to respect the country's 'domestic social and political policies' (*see* also Article IV, section 3(b)). Spillovers, key linkages among members and the multilateral framework are duly taken into account. At the end of the mission, a country report is prepared and submitted to the Executive Board for discussion. A summary of the Board's assessment is subsequently transmitted to the country's government. The assessments, which are non-binding, may range from favourable, neutral, critical, to strongly critical. If the member country agrees, a press release providing background and a summary of the Board discussion is published, with or without the full Article IV Report.

134. The IMF also exercises *surveillance over currency unions*. The introduction of the Euro in 1998 prompted the Executive Board to establish new modalities for conducting surveillance over Euro area members within the framework of Article IV bilateral consultations. A few years later, a framework for policy discussions with the other existing currency unions was set up: the Eastern Caribbean Currency Union, the Central African Economic and Monetary Community and the West

African EMU. Currency unions cannot become members of the IMF (membership is country-based), but their policies affect the international monetary system. In 2002, the Executive Board clarified that discussions with EMU institutions were to be held separately from those with individual Euro area countries.

135. Today, bilateral surveillance consultations have in practice only limited effect on member countries (especially on the larger ones) for the simple reason that Article IV prescriptions have the nature of soft law recommendations without far-reaching consequences. In the consultations, only the weight of arguments and, to a certain extent, peer pressure play a role in persuading a country to bring its economic policy more in line with the conclusions of the IMF. Effective IMF's surveillance thus depends crucially on the willingness of members to take the Fund's advice. To make surveillance more effective, members could be asked to respond within a specific time to Article IV assessments. In cases where a member's policies appear to depart from the Fund's advice, the member should be given increasingly stronger warnings to bring its policies on course. However, under the current interpretation of Article IV, it is not possible for the Fund to give legally binding directives or to impose sanctions.

§5. Multilateral Surveillance: Overseeing Global and Regional Economic Trends

136. The scope of *multilateral surveillance* over the international monetary system is defined by Article IV, section 3(a) and by the 2012 Integrated Surveillance Decision. In conducting multilateral surveillance, the Fund is called to focus on issues that may affect the effective operation of the international monetary system.

137. The key instruments of multilateral surveillance are the World Economic Outlook (WEO), the Regional Economic Outlook (REO), the Global Financial Stability Report (GFSR) and the Fiscal Monitor and External Sector Reports. The WEO is a six-monthly IMF publication, which discusses the economic and monetary developments in a global framework; members are expected to tailor their policies according to the findings of the Outlook. The REO provides an analysis of the economic trends in the five major regions of the world. The GFSR addresses the global financial system and financial markets. It analyses market conditions and signals systemic issues that could pose a risk to financial stability. The Fiscal Monitor surveys and analyses the latest public finance developments, updates medium-term fiscal projections and assesses policies to put public finances on a sustainable footing. Since 2012, External Sector Reports examine the external position of systemically large economies.

§6. The Prohibition of Exchange Rate Manipulation

138. An exception to the soft law of Article IV is the duty to avoid exchange rate manipulation. Exchange rate manipulation was one of the ills that characterized the great depression in the *interbellum*. At the completion of the Bretton Woods conference in 1944, Henry Morgenthau, the US Secretary of the Treasury and president of the conference, opened his closing address by stating that the conference successfully worked out ‘methods which would do away with the economic evils – the competitive currency devaluations and destructive impediments to trade – which preceded the present war’. In underlining the role such behaviour might have played in the prelude of World War II, Morgenthau advocated for the inclusion of specific provisions on the issue. As a result, Article I of the IMF Articles listed among the purposes of the Fund that of avoiding competitive exchange depreciation. Furthermore, the original language of Article IV stipulated that members ‘undertake to collaborate with the Fund … to avoid competitive exchange alterations’. Amendments since then have modified this phrase into a firm but conditioned commitment binding upon members: each member shall ‘avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members’ (Article IV, Section 1 (iii)). Subsequent interpretations by the Executive Board have softened this obligation.

139. According to the Annex to the 2012 Integrated Surveillance Decision, ‘a member will only be considered to be manipulating exchange rates in order to gain an unfair competitive advantage over other members if the Fund determines both that: (A) the member is engaged in these policies for the purpose of securing fundamental exchange rate misalignment in the form of an undervalued exchange rate and (B) the purpose of securing such misalignment is to increase net exports’. In addition, the Fund’s legal department has explained that the phrase ‘in order to’ implies the determination of intent. It is thus required that the Fund must find evidence of a mental process that betrays intent. The Fund may talk to the member and ask for an explanation of the member’s policies, but denial of manipulation appears to be enough to escape from a negative verdict: ‘Any representation made by the member regarding the purpose of its policies will be given the benefit of any reasonable doubt.’ In the final analysis, intent is virtually impossible to prove unless statements or documents confirm that it is a deliberate action to manipulate.

140. The Fund’s reluctance to address exchange rate manipulation stands in stark contrast with demands from members to address this issue. In 2013, it featured on the agenda of the G-20 but was played down by the Managing Director of the IMF. In the US, currency manipulation continues to be on the agenda of Congress, but not a single bill has ended up as law. Attempts to qualify manipulation as a trade distortive practice such as dumping or subsidies all ran counter to practical and legal obstacles. In 2014, the US administration recognized that ‘recent developments in the Renminbi exchange rate would raise particularly serious concern’, but the Treasury concluded that no major US trading partner could be considered a manipulator under US legislation. US-based research institutes and business communities have also raised concerns. The issue was downplayed in 2015 when the IMF Executive Board concluded that the Renminbi met the criteria for inclusion in the SDR basket (*see infra*, paragraph 175).

§7. The Financial Sector Assessment Programme

141. Since the 1978 Second Amendment, one of the principal objectives of the Fund has become 'the continuing development of the orderly underlying conditions that are necessary for *financial* and economic stability' [emphasis added] (Article IV, section 1). The IMF justifies its jurisdiction over financial stability as it is a key determining factor of members' domestic and external stability.

142. The 2008 US sub-prime mortgage crisis raised concerns about the capacity of the Fund to identify systemic risks in financial markets and forewarn for the global financial and economic crisis. The Fund's role preceding the crisis was subject to close scrutiny by various commentators and the IEO (on which *see supra*, paragraphs 83 ff.). In the 2011 IEO evaluation report on 'IMF Performance in the Run-Up to the Financial and Economic Crisis', the performance of the staff that analysed market developments and produced reports on the state of affairs prior to the crisis was reviewed. While the report was prepared when the crisis was not over yet, it sketches a broader picture of the functioning and management of the staff when conducting surveillance tasks in the period 2004–2007. The report describes how the staff failed to provide 'clear warnings about the risks and vulnerabilities associated with the impending crisis before its outbreak'. The IEO quotes Article IV reports on the US, generally considered as the jurisdiction where the financial crisis has rooted. The IEO underlines that, in said Article IV reports, the staff praised sophisticated financial innovations in the housing market, saw little risk in sub-prime securitization and considered default risks in financial markets negligible. In a response to the IEO, staff complained that important impediments had obstructed its work, pointing to the fact that the US had refused to provide data to the IMF staff in the context of the Financial Sector Assessment Programme (FSAP).

143. To address these concerns, the Fund undertook a review of the effectiveness of its surveillance process. The exercise highlighted the fact that surveillance was too fragmented and that there were weaknesses and loopholes: in particular, gaps in financial surveillance were to be addressed promptly. To this end, the 2012 Integrated Surveillance Decision clearly integrated macro-financial analysis into Article IV surveillance (*see supra*, paragraph 130). Moreover, the FSAP, first established in 1999, underwent a radical reform.

144. FSAPs provide a comprehensive evaluation of the stability and soundness of a country's financial sector, assess the financial sector's contribution to economic growth and development and offer policy advice on how to reduce vulnerabilities. In developing and emerging economies, FSAPs are jointly conducted by the Fund and the World Bank and include two elements: a financial stability assessment (under the IMF responsibility) and a financial development assessment (under the World Bank responsibility). In advanced economies, FSAPs are conducted by the IMF alone.

145. Originally, FSAPs were an instrument of technical assistance, covered by IMF Article V, section 2(b), thus being 'voluntary' in nature. In September 2010, the IMF Executive Board decided to integrate FSAP stability assessments into IMF Article IV bilateral consultations for twenty-five jurisdictions with financial sectors deemed by the Fund to be systematically important (the list increased to twenty-nine in 2013). Accordingly, FSAP assessments have become mandatory for countries with systemically important financial sectors, while they continue to be voluntary for all other members.

146. The assessments, which are expected to take place every five years, comprise three elements: the degree of interlinkages between financial sectors (and thereby the risk of contagion); the effectiveness of domestic supervision against international standards and an assessment of the authorities' capacity to manage and resolve a financial crisis should the risks materialize. Importantly, however, overseeing the stability of financial markets continues to be a primary responsibility of national supervisory authorities. Financial System Stability Assessments (FSSAs) are often made public, and they are highly regarded by national authorities. The absence of an international financial authority that assesses financial markets operating across national borders may be considered a lacuna in global governance.

Chapter 3. Transparency at the IMF

147. Transparency of economic and fiscal data is critical for sound decision-making, to enhance accountability of policymakers and to facilitate the orderly functioning of an economy. The IMF promotes increased transparency on the part of member countries through the disclosure of documents, especially in the context of surveillance and IMF-supported programmes, and a number of other policies.

148. The IMF's surveillance exercise has become increasingly transparent, with a great majority of Member States accepting to have the country report and a press release published following Article IV consultations. Press releases reflect the Executive Board's discussions with the member on its macroeconomic and financial situation and the Board's assessment. In attracting foreign capital and investment, countries may benefit from a publicized favourable conclusion of Article IV consultations.

149. As for the use of IMF resources under a programme, members may decide to release to the public letters of intent and similar documents (on which *see infra*, paragraph 295). These documents, issued by a government requesting balance of payments support, describe policy intentions. The Fund encourages members to publish documents related to the use of IMF resources; publication is voluntary but presumed, and the member's consent is typically obtained on a non-objection basis. Country documents can be found on the Fund's website.

150. In the area of data transparency, the Fund promotes members' adherence to the Special Data Dissemination Standard (SDDS) and participation in the General Data Dissemination System (GDDS). The SDDS aims at the publication of up-to-date data on economic performance and policy in the real, fiscal, financial and external sectors; participation is voluntary.

151. A salient development in the Fund's practices has been the publication of 'good practices' codes on how to promote good governance in the field of fiscal and monetary policies. The codes were drafted in close consultation with the IMF members, IOs and NGOs. Whereas these codes do not hold mandatory rules for members, they contain standards that may be upheld in Article IV consultations. Moreover, these standards may be applied as preconditions before the Fund approves balance of payments support.

152. In 2014, in the aftermath of the global financial crisis, the IMF proposed a series of improvements to existing international financial standards and monitoring arrangements. The 2014 Fiscal Transparency Code is based on a four-pillar structure. The first pillar is devoted to fiscal reporting and calls for fiscal statistics and accounts to provide relevant, comprehensive, timely and reliable information on the government's financial position and performance. The second pillar focuses on fiscal forecasting and budgeting, emphasizing the need for budget documentation to provide a clear statement of the government's fiscal and policy objectives, and timely and credible forecasts for the evolution of public finances. The third pillar deals with fiscal risk analysis and management, underlining the importance of comprehensive disclosure, analysis and control of the key risks to the public finances. The fourth pillar concerns resource revenue management and addresses transparency issues related to natural resource endowments and revenues. In 2018, the Fund published the Fiscal Transparency Handbook, covering pillars one and two of the Fiscal Transparency Code and providing detailed guidance on the implementation of the Code principles and practices.

153. Together with the World Bank, in the context of its Standards and Codes Initiative, the IMF assesses members' compliance with international transparency standards in twelve policy areas considered useful for the operational work of the Bretton Woods Institutions. These include: accounting; auditing; anti-money laundering and countering the financing of terrorism; banking supervision; corporate governance; data dissemination; fiscal transparency; insolvency and creditor rights; insurance supervision; monetary and financial policy transparency; payments systems; and securities regulation. In a number of areas, the IMF has adopted standards developed by other institutions such as the Basel Committee on Banking Supervision, the International Organization of Securities Commission and the International Association of Insurance Supervisors or the Organisation for Economic Co-operation and Development (OECD). Reports on the Observance of Standards and Codes (ROSCs) summarize the extent to which countries observe internationally recognized standards and codes; they are published on the IMF's website.

154. On its part, the Fund is committed to achieve greater openness about its own policies, decision-making and the advice it gives to member countries. In particular, the Fund fostered its transparency on surveillance and IMF-supported programmes, on financial operations and the outcomes of external and internal reviews. This notwithstanding, concerns about the IMF's lack of transparency are often raised by NGOs and civil society organizations.

Chapter 4. Currency Convertibility

§1. Current Account Convertibility

155. Currency convertibility refers to the freedom to convert domestic currency into foreign currencies at a given exchange rate and to its subsequent use for foreign commercial transactions. A distinction can be made between current account convertibility, which means unrestricted payments and transfers for current transactions, and capital account convertibility, which means unrestricted inwards and outwards capital flows.

156. Under the IMF legal framework, there is a clear asymmetry in the regulation of current international payments and capital movements. In fact, the convertibility obligation of Article VIII only covers current international transactions. Article XXX(d) explains the scope of 'current transactions'. Payments for current transactions are payments which are not for the purpose of transferring capital and include, *inter alia*, all payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities.

157. Under Article I, the IMF is authorized to facilitate the expansion and balanced growth of international trade and to assist in the elimination of foreign exchange restrictions that hamper the growth of world trade. For this purpose, members are expected to accept the obligations under Article VIII, sections 2, 3 and 4. By doing so, members agree not to impose restrictions on the making of payments and transfers for current international transactions and not to engage in discriminatory currency arrangements or multiple currency practices without the approval of the IMF. In its practice, the IMF has considered, for instance, the following types of measures to amount to forbidden exchange restrictions: quantitative limits on the availability of foreign exchange for certain current international transactions (like the imposition of annual allowances on cross-border education and medical expenses); the establishment of a foreign exchange budget to determine the maximum availability of foreign exchange for specific categories of authorized imports; and restrictions on the repatriation of investment income by non-residents.

158. The IMF founding fathers acknowledged however that – subject to adequate safeguards to protect what was believed to be the general interest of the international community – exchange restrictions were a useful tool to temporarily deal with balance of payments problems. Therefore, even if current account convertibility lies at the heart of the IMF Articles of Agreement, the Fund's approach to exchange restrictions was one of limited tolerance. The following exceptions to the liberalization of current international payments and transfers apply.

159. First, under IMF Article XIV, member countries are allowed a transitional period before accepting the obligations on currency convertibility. During this period, they are permitted to 'maintain and adapt to changing circumstances' those currency restrictions that were already in force at the time they joined the IMF. IMF Article VIII therefore applies only to member countries that have expressly renounced to Article XIV status. Currently, only very few member countries have not accepted yet the obligations of Article VIII (at the beginning of 2018: Afghanistan, Angola, Bhutan, Bosnia and Herzegovina, Burundi, Eritrea, Ethiopia, Iraq, Kosovo, Liberia, Maldives, Myanmar, Nigeria, Sao Tomé, Somalia, South Sudan, Syria, Turkmenistan and Tuvalu).

160. Second, under specific circumstances the Fund may approve the introduction of exchange restrictions, which as a general principle however remain prohibited. In 1960, restraining its own discretionary power, the Executive Board adopted Decision No. 1034-(60/27) according to which: 'if members, for balance of payments reasons, propose to maintain or introduce measures which require approval under Article VIII, the Fund will grant approval only where it is satisfied that the measures are necessary and that their use will be temporary while the member is seeking to eliminate the need for them'. A member country has to obtain the Fund's approval prior to introducing exchange restrictions. The request has to be made in writing and motivated. If the criteria mentioned above are satisfied, the Executive Board grants its approval for a limited period of time (often until the completion of the next Article IV consultation or, if the country has a Stand-By Arrangement in place, until the next programme review).

161. Third, member countries can introduce exchange restrictions for essential national or international security reasons. Under the original IMF Articles, no relevance was given to the circumstances in which restrictions were imposed: Article VIII did not even make explicit reference to balance of payments problems. In 1952, however, supported by the US, the IMF Executive Board adopted Decision No. 144-(52/51), which allows the introduction of exchange restrictions for national or international security reasons. Fund's members can rely on Decision No. 144-(52/51) especially when required to impose economic sanctions by a UN Security Council resolution adopted under Chapter VII. Security restrictions usually entails the freezing of assets and local bank accounts opened by citizens of the targeted country (natural and juridical persons) and denominated in either domestic or foreign currency. In this case, deposits are made inconvertible and their transfer abroad is forbidden also with regards to the making of payments or transfers for current international transactions. More recently, IMF members resorted to the security exception to introduce restrictions targeting natural or legal persons related to terrorism (*see* UN Security Council resolution 1373 (2001) on the prevention and suppression of terrorism financing).

162. Adopting or maintaining exchange restrictions and multiple currency practices that are in contrast with the IMF Articles leads to three different sets of consequences. First, particularly important for private contracts is the clause under Article VIII, section 2(b) which stipulates the unenforceability of 'exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement'. The meaning of this provision is that members are obliged not to enforce by judicial or administrative authorities exchange contracts that violate exchange restrictions authorized by the Fund. The interpretation of 'exchange contract' is not without controversy. A broad interpretation would include all contracts involving international payments or transfers and domestic contracts payable in foreign exchange: sales, loans, deposits, etc. The Fund may give advice about the consistency of exchange controls regulations with the Articles of Agreement.

163. Second, Fund adjustment programmes usually include a standard performance criterion which abrogates the right to tranche disbursements when the member country imposes or intensifies exchange restrictions, unless a waiver is granted (on performance criteria and waivers *see infra*, paragraph 305).

164. Third, according to IMF Article XXVI, section 2(a), a member breaching an IMF obligation can be declared ineligible to use the Fund's general resources and its voting rights can be suspended.

§2. Convertibility of Foreign-Held Balances or 'Official Convertibility'

165. Article VIII, section 4 establishes certain obligations with respect to the convertibility of officially held balances of currencies: an IMF member is required to buy back the holding of its currency detained by another member if so requested and if the balances have been recently acquired as a result of current international transactions, or if conversion is needed for making payments related to current international transactions. 'Official convertibility' refers to transactions between central banks or monetary authorities.

166. Developments in monetary practice have made a dead letter of Article VIII, section 4. The reason for its non-use is the close connection of this provision with the system of fixed (but adjustable) exchange rates that collapsed in the early 1970s. Nevertheless, section 4 has been maintained in the Articles of Agreement and if a member were requested to convert balances of its currency, the member would prima facie be breaching its obligations if it refused conversion. In practice, holdings of foreign currencies that are considered in excess of needs are sold on the currency market. The Report on the Second Amendment suggests that no obligation to convert will be enforced so long as exchange markets normally serve this function. The development of interbank foreign exchange markets has in practice deprived of operational relevance the provision of section 4.

§3. Capital Account Liberalization

167. Capital account liberalization should be distinguished from current account liberalization. Notably, Article I does not list capital account liberalization among the purposes of the Fund, while current account liberalization is one of its core objectives.

168. At the Bretton Woods Conference, negotiators had diverging views on the desirability of capital account liberalization. According to John Maynard Keynes, while current account liberalization was to be achieved as soon as international conditions had sufficiently stabilized, countries were supposed to be able to protect themselves against short-term capital flows, which had contributed to the instability of the pre-war system. On the contrary, Harry Dexter White believed that capital controls were unnecessary in normal circumstances. A common ground was found by accepting that countries would be allowed to impose and enforce controls to prevent speculative capital outflows from disrupting normal trade relations. This position is reflected in Article VI, section 3 which recognizes the right of members to determine at their own discretion whether controls are 'necessary' to regulate international capital flows: 'Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments'. At the same time, however, pursuant to Article VI, section 1(a), the Fund may request a country to introduce controls to prevent capital flight. Besides, when receiving financial assistance, members are not entitled to use the Fund's general resources to meet large or sustained outflows of capital. This notwithstanding, the currency crises of the 1990s showed that the IMF is willing to provide balance of payments support even when a member is suffering from a sudden and disruptive loss of market confidence reflected in pressures on the capital account and its reserves.

169. In its practice, the Fund has not insisted that capital controls be introduced. On the contrary, the Fund embraced capital account liberalization, exerting pressure through conditionality, technical assistance and surveillance over its members. Since the liberalization of capital movements is not within the Fund's mandate, the introduction of a general obligation to gradually liberalize capital account transactions subject to certain safeguard provisions would require an amendment of the IMF Articles. In 1961, the OECD adopted its 'Code of Liberalization of Capital Movements' to gradually remove barriers to the movement of capital while providing flexibility to cope with situations of economic and financial instability. During the 1960s, many industrialized countries implemented policies ensuring free capital movements. In 1997 and 1998, proposals were made to amend the Articles to include provisions on liberalization of capital movements, but they were eventually set aside. Many observers consider the unimpeded flow of private capital as an essential element of an efficient international monetary system, but the amendment proposal was not put to a vote due to the opposition coming from developing countries.

170. Currency crises in the 1990s and the global financial crisis have made many members reluctant to further pursue liberalization. There appears to be a consensus that liberalization of capital movements can only be effective when particular prerequisites are fulfilled. Therefore, liberalization must be approached cautiously in concert with appropriate macroeconomic and exchange rate policies and a sound financial sector. In 2010, in the aftermath of the global financial crisis, the Fund started to revise its longstanding policy in favour of capital liberalization and acknowledged that capital controls may effectively mitigate the harmful effects of large volatile capital inflows. In 2011, the Fund recognized that controls on capital outflows can be useful in crisis or near crisis conditions, but only as a supplement to more fundamental policy adjustment.

171. In 2012, the IMF adopted a new 'Institutional View on the Liberalization and Management of Capital Flows'. The approach adopted by the IMF aims at managing capital flows in a way that allows recipient countries to reap the benefits of financial globalization while also minimizing the risks associated with inflow surges. The Institutional View recognizes that capital flows can have substantial benefits for countries, but at the same time they also carry risks. Liberalization of capital flows, therefore, needs to be well planned, timed and sequenced. Moreover, when facing rapid capital inflow surges or disruptive outflows, countries can resort to capital flow management measures. These measures, however, should not substitute for warranted macroeconomic adjustment.

172. The Institutional View does not alter members' rights and obligations under the Articles. In 2013, the Fund adopted a Guidance Note for the liberalization and management of capital flows to provide guidance to staff on how to apply the Fund's Institutional View. For instance, staff advice should not presume that full liberalization is an appropriate goal for all countries at all times. Instead, the appropriate degree of liberalization at any time would depend upon the country's circumstances and overall economic objectives. Besides, staff could discuss a temporary reimposition of capital flow management measures under certain circumstances when this is consistent with an overall strategy of capital flow liberalization.

173. In 2016, the Executive Board acknowledged that the capital flow environment had changed significantly since the adoption of the Institutional View and that the challenge had shifted from addressing capital inflow surges to dealing with capital flow reversals. To manage the latter, since 2012, countries relied primarily on macroeconomic policies, while capital flow management measures were only adopted in crisis or imminent crisis circumstances, consistently with the Institutional View. A few countries used macroprudential measures to manage financial risks associated with capital flows. In general, the trend towards greater capital account openness had continued. Based on the review of countries' experiences, the Executive Board considered that the Institutional View remains relevant as of today and will continue playing an important role.

Chapter 5. Special Drawing Rights and International Liquidity

174. The 1969 Amendment of the IMF Articles created the possibility to supplement monetary reserves of members with SDRs to keep pace with growing international trade transactions in the context of the par values system. The economic rationale of the SDRs was that a higher volume of reserves could be desirable to support a higher volume of trade transactions rather than depend on increased money velocity. Additional reserves could be created in two ways: countries could increase their reserves by borrowing (for instance, from official bilateral creditors), by issuing sovereign bonds or through money creation (in this case without incurring debt). The SDRs represents the latter solution. The SDR is a supplementary international reserve asset created by the IMF. It may be considered a form of 'fiat money', allocated to IMF members, that is backed by members' obligations under the Articles of Agreement.

175. Originally, the value of the SDR was linked to gold. After the demise of the par value system, however, the decision was adopted to define the SDR's value by a basket of currencies. The basket composition is reviewed by the Executive Board every five years to adapt to changes in the relative weight of currencies in the international trading and financial system. With the introduction of the Euro on 1 January 1999 and until September 2016, the SDR basket was composed of the four following currencies: the US Dollar, the Japanese Yen, the Pound Sterling and the Euro. Starting from October 2016, the Chinese Renminbi was added to the SDR basket. Each currency in the SDR basket is weighted, depending on its relative strength. The value of the SDR is determined daily based on market exchange rates. The SDR value in terms of the US Dollar is published on the IMF's website. On the 1st of June 2018, SDR 1 was equal to GBP 0.9398, EUR 0.8231, USD 0.7054, RMB 0.1099 or JPY 0.0064.

176. The decision to create SDRs is taken by the Board of Governors with a majority of 85% of the total voting power whenever the long-term global need so requires. The same majority is needed to cancel SDRs (which, incidentally, has never happened).

§1. General and Equity SDRs Allocations to IMF Members

177. Only members who participate in the SDRs Department may receive allocations of SDRs from the IMF and be involved in SDR transactions. Such an allocation provides each member with a costless and unconditional international reserve asset on which interest is neither earned nor paid. However, if a member's SDR holdings rise above its allocation, it earns interest on the excess. Conversely, if it holds fewer SDRs than allocated, it pays interest on the shortfall.

178. The IMF can also empower 'official' organizations to hold SDRs (like multilateral development banks), including institutions performing the functions of the central bank for more than one IMF member (like the ECB and the Eastern Caribbean Central Bank). 'Prescribed holders' can acquire and use SDRs in exchange for an equivalent amount of a monetary asset (other than gold) in transactions and operations with other prescribed holders or with an IMF member. Though, they cannot receive allocations from the IMF.

179. The role of the SDR as a supplement to monetary reserves has been moderate. SDRs were distributed through general allocations only twice before the 1990s (in 1970–1972 and 1979–1981). At the 1994 annual meeting, proposals were made for an increase in SDR allocations. In addition, there were also suggestions to provide special SDR allocations for developing members and economies in transition. The IMF Articles, however, do not allow for selective allocations, not even for countries that became members at a later stage and did not benefit from previous allocations. Moreover, 'in all its decisions with respect to the allocation and cancellation of special drawing rights the Fund shall seek to meet the long-term global need'. The only reason for an allocation of SDRs, therefore, can be the smooth operation of the international monetary system. Neither the need of an individual member or group of members nor the principle of equitable allocation between existing and new members may be taken into account. The IMF Articles provide in fact that each participant in the SDR Department will receive its share of SDR allocation in proportion to its quota (Article XV, section 1 and Article XVIII).

180. Since the last allocation of SDRs at the beginning of the 1980s, membership in the Fund increased more than one-fifth, also to include countries that were part of the former Soviet Union. For new members of the Fund that had not enjoyed the benefit of previous SDR allocations, a special amendment of the Articles of Agreement was proposed to overcome the limits set by general allocations. The Fourth Amendment entered into force in 2009, together with the third (and, until now, last) general allocation of SDRs. It provided a 'Special One-Time Allocation of Drawing Rights' which benefited particularly the thirty-eight IMF members that had never received any SDR allocation. The amendment is believed not to compromise the principle that allocations are only allowed when a long-term global need so justifies. The 2009 special and general SDR allocations raised the total cumulative SDRs allocations to 204.1 billion SDR. Currently, all IMF members participate in the SDR department.

§2. Operations and Transactions in SDRs

181. All operations and transactions involving SDRs are conducted through the SDRs Department. SDRs can be described as a potential claim on the freely usable currencies of IMF members and can be used to adjust the composition of national reserves without representing a balance of payment need and without undertaking economic policy measures or repayment obligations. Holders of SDRs can convert SDRs in an equivalent amount of freely usable currency in two different ways.

182. In the first case, the IMF acts as an intermediary. According to Article XIX, section 5, the Fund designates the member (with a strong external position) that will be obliged to provide 'freely usable currencies' (*see infra*, paragraph 250) in exchange for SDRs up to a specified amount. The exchange can only be made for improving the balance of payments or the reserve position of the requesting SDRs holder. The mechanism is executed through quarterly designation plans, approved by the Fund, which lists participants subject to designation (those with sufficiently strong balance of payments and gross reserve positions) and set maximum limits to the amounts of SDRs which they may receive during the quarter. The designation of individual participants may also be determined in a manner that over time promotes equality in the 'excess holding ratios' of participants (i.e., SDR holdings above or below allocations as a proportion of participants' official gold and foreign exchange reserves). Since September 1987, there have been no transactions under the designation mechanism.

183. In the second case, exchanges are the result of voluntary trading agreements between members. Under these arrangements, several members and one prescribed holder volunteer to buy or sell SDRs within predefined limits.

184. IMF members may also use SDRs to discharge their obligations to the IMF, like subscription payments, repurchase operations, payments of charges and other transactions. Accordingly, the Fund may hold SDRs in the GRA.

185. The SDR is the IMF unit of account.

Chapter 6. The IMF and Sovereign Debt Management

186. The Fund has developed a framework for conducting Debt Sustainability Analyses (DSAs) as a tool to detect, prevent and resolve potential debt crises. The framework analyses both external and public sector debt and differentiates between market-access countries and LICs. DSAs are conducted in the context of both Article IV surveillance and IMF-supported programmes and their reviews. They usually consist of: an analysis of a country's projected debt burden over a period of twenty years and its vulnerability to external and policy shocks; an assessment of the risk of external debt distress; and recommendations for a borrowing strategy limiting the risks of debt distress. A country is considered to be in debt distress when it is already experiencing difficulties in servicing its debt.

187. Apart from the DSAs, the Fund's traditional role in debt management is to adopt adjustment programmes helping members to attain external viability, have continued access to credit markets and prevent the accumulation of excessive debt burdens.

§1. The IMF and Sovereign Debt Restructuring

188. 'Sovereign debt', either external or domestic, is the debt issued or guaranteed by the central government of a State. States can borrow from a variety of sources. They can receive loans from international financial institutions (IMF, WB and multilateral development banks), foreign governments and commercial banks (as either individually or part of a syndicate), or they can issue sovereign bonds in the capital markets.

189. The features of sovereign debt restructurings have been shaped by the type of creditors and by the nature of the debt. Debt restructuring vehicles therefore change according to the category of creditors involved: (a) official bilateral debt is renegotiated under the Paris Club umbrella; (b) commercial bank debt is restructured through the London Club process or Bank Advisory Committees; and (c) bond debt is restructured via exchange offers, with different modalities to be applied on the basis of the national law governing the bond contract, usually laws of England or of the New York state.

190. In the nineteenth century and the early years of the twentieth century, most sovereign debt was in the form of bonds or loans disbursed by private banks, providing mainly short-term trade financing or interbank credit lines. To deal with sovereign defaults, bondholders' committees were established and, occasionally, western powers even engaged in 'gunboat diplomacy' to recover debts owed to their nationals.

191. After World War II, government-to-government loans became the preeminent form of borrowing, and sovereign debt restructurings were dealt with by the Paris Club. Nowadays, the Paris Club is the leading intergovernmental forum to restructure official bilateral debt, which is debt owed by – or guaranteed by – the national government to other countries. It is composed of twenty-two permanent members with large credit exposure to other states. Representatives of the IMF and the IBRD are invited to Club meetings as observers, to provide information and technical advice. The Paris Club meets with a debtor country on its request to negotiate a debt restructuring only if the country is implementing – or committed to implement – an IMF programme and its attached conditionality (on which *see infra*, paragraphs 277 ff.).

192. It was only in the 1970s that states started to borrow from international commercial banks through long-term syndicated credit agreements. During the 1980s, however, the majority of emerging countries defaulted on their bank loans, which had to be restructured by small creditor banks' committees. The process was labelled London Club. The term is used to refer to meetings held between commercial creditors and a debtor state by establishing an ad hoc Bank Advisory Committee, typically composed of ten to twenty senior representatives of the banks with the largest credit exposures to the debtor country. The IMF is not involved in the negotiations. However, the debtor country is typically requested to enter an IMF-supported programme before the conclusion of the negotiations.

193. During the 1990s bank lending to emerging economies declined as compared to sovereign bond financing and nowadays the external debt of sovereigns is mainly held in the form of bonds. Sovereign bonds are actively traded in secondary markets and held by a broad community of investors. Current bondholders include many categories of creditors, both domestic and foreign, which range from retail to institutional investors (banks, investment funds, hedge funds, pension funds and insurance companies), also encompassing sovereign wealth funds, central banks, the IMF and similar organizations, as well as institutions like the ECB. Restructurings in this case usually take the form of sovereign bond exchanges.

194. In 2002, the IMF explored the feasibility of a universal legal framework for sovereign debt restructuring. The Fund contended that the contractual approach – i.e., relying on the introduction of collective action clauses (CACs) in sovereign bonds contracts – could not have provided a comprehensive solution for sovereign debt restructuring and proposed to adopt a complementary statutory approach envisioning the creation of the Sovereign Debt Restructuring Mechanism (SDRM).

195. CACs are contractual provisions designed to streamline the restructuring process, limiting the ability of individual bondholders to initiate litigation. They describe ex ante what would occur in the event of a default, allowing a supermajority of bondholders to modify the features of a specific bond issue, including its payment terms, making the amendments binding also for dissenting minorities (the so-called holdouts). Nowadays, they have become boilerplate provisions in standard market practice and represent the core of the contractual approach as opposed to the statutory one. At the time of the SDRM proposal, however, CACs had not been adopted under New York law, and many were sceptical about the possibility that they would be included in future sovereign bonds offerings.

196. The IMF focused on the benefits of adopting a statutory approach. According to the SDRM framework, a 75% majority of creditors would have had the power to bind in all creditors to accept or reject a restructuring offer. Moreover, an arbitration body – the Debt Resolution Forum – would have had the power to approve a government's restructuring plan and act as a facilitator for a smooth resolution of debt disputes. Interim financing would be provided by the Fund to the distressed debtor country. The SDRM, though, needed an amendment of the IMF Articles, which was never agreed upon for the opposition of the US Treasury. Many concerns were raised on the proposal: on the one side, creditors feared that reducing the costs of defaults by establishing a more predictable framework would have encouraged sovereign nations to restructure their debt more often; on the other side, debtors feared that creditors' concerns would have resulted in an increase of borrowing costs. When in 2003 the IMFC discussed the proposal, its members showed a clear preference towards the contractual approach and decided to promote a broader use of CACs, thus setting definitively aside the SDRM project.

197. More recently, the European sovereign debt crisis had the effect to revive the debate over sovereign debt restructuring. In April 2013, the Fund pushed for a new approach towards debtor countries in a paper titled 'Sovereign Debt Restructuring – Recent Developments and Implications for the Fund's Legal and Policy Framework'. In the said paper, it was argued that if a country has a high and possibly unsustainable debt load, then financial assistance would be provided only at the condition that the sovereign restructures its debt (typically with a rescheduling rather than through a debt stock reduction). Basically, the IMF declared itself ready to impose upfront losses on bondholders before the country can obtain a bailout. The message was couched in opaque language: 'There may be a case for exploring additional ways to limit the risk that Fund resources will simply be used to bail out private creditors. For example, a presumption could be established that some form of a creditor bail-in measure would be implemented as a condition for Fund lending in cases where, although no clear-cut determination has been made that the debt is unsustainable, the member has lost market access and prospects for regaining market access are uncertain'. Providing the member with a more comfortable debt profile would bring the benefit of preventing creditors from exiting while the Fund is providing financial assistance, enhancing also market confidence in the feasibility of that country's adjustment efforts. This approach would avoid the typical situation in which the Fund is requested to lend money when the country has already piled up an unsustainable debt, with the effect that the provided financial resources immediately exit the country in the form of coupon payments to foreign bondholders.

198. In October 2013, a group of experts – the Committee on International Economic Policy and Reform – published a report titled 'Revisiting Sovereign Bankruptcy' (the so-called Brookings Report). The authors put forward two complementary recommendations: (1) a widespread use of CACs in sovereign bond contracts and (2) the creation of a Sovereign Debt Restructuring Facility (SDAF) by the IMF, which would combine debt restructuring and IMF lending policies. The new mechanism would require the Fund's staff to establish criteria under which countries would be eligible to access the new facility. Countries that fall under those criteria (after a DSA) would access IMF crisis lending only under the SDAF; accordingly, the Fund would be precluded from bailing out sovereigns with doubtful debt sustainability unless they restructure their debt to restore their long-debt sustainability. The Brookings Report contains a proposal to amend the IMF Articles to set an ex ante level for debt-to-GDP ratio over which no lending would be provided without a debt restructuring taking place. This goes in the opposite direction to the IMF, which would rely instead on its increasingly sophisticated DSA.

199. In October 2014, the Executive Board discussed the paper 'Strengthening the Contractual Framework to Address Collective Action Problems in Sovereign Debt Restructuring'. The research analysed the effectiveness of the contractual market-based approach to debt restructuring. In particular, it proposed the inclusion in international sovereign bond contracts of a CAC with an aggregation feature. Generally, CACs operate within a single bond issue, therefore binding all the bondholders of the same issue but not affecting the bondholders of other bond issuances; aggregated CACs – which to date have been used by a limited number of sovereign issuers – will operate across different series of debt securities. Directors decided to promote the inclusion of enhanced contractual provisions in new international sovereign bond issuances. Following the publication of enhanced standard terms for aggregated CACs by the International Capital Market Association, aggregation features are becoming increasingly common in new international sovereign bond contracts.

§2. The IMF's Preferred Creditor Status

200. The IMF, the World Bank and all the multilateral development banks enjoy preferred creditor status: countries borrowing from these international organizations are expected to grant them priority in repayment over other public or private creditors. Some authors have expressed the view that the privileged status of the IMF comes from an international customary law norm. Others, however, contend that a general international law rule to this end had not arisen yet and that decisions by some creditor countries (i.e., Paris club members) to extend de facto preferential status to the IMF differ fundamentally from a legal right. Besides, in the Articles of Agreement, there is no explicit reference to the Fund's preferred creditor status. During the protracted arrears crisis of 1983–1992, the Fund acknowledged the feeble legal grounds for its preferred creditor status and it 'urged all members, within the limits of their laws, to treat the Fund as a preferred creditor'. Nonetheless, it is almost undisputed that when the Fund provides financial assistance to a Member State, its claims are senior to those of all the other creditors. In the practice of the Paris Club and of G-20 countries the IMF is always awarded seniority.

201. It can be argued that priority is fundamental to ensure that the IMF's reserve assets remain risk-free. Without preferred creditor status, the IMF would greatly limit its lending activities, especially in the case of countries struck by a debt crisis. This 'adequate safeguard' (within the meaning of IMF Article V, section 3) reflects the global public good nature of the IMF financing.

§3. The Heavily Indebted Poor Countries and the Multilateral Debt Relief Initiatives

202. In 1996, after the debt crisis of the 1980s, the IMF and the World Bank launched the Heavily Indebted Poor Countries initiative (HIPC). The initiative aimed at reducing the debt burden of all eligible countries to sustainable levels provided that they implemented strong adjustment programmes. The initiative established a coordinated action by the IMF and the World Bank, official bilateral creditors and commercial creditors. In June 1999, at the G-7 meeting of finance ministers in Cologne, the initiative was substantially enhanced to provide deeper and more rapid debt relief to HIPCs.

203. In 2005, to accelerate progress towards the Millennium Development Goals (MDGs), the Multilateral Debt Relief Initiative (MDRI) was established. Under the MDRI, the IMF, the World Bank and the African Development Fund were to cancel 100% of their claims for countries reaching the completion point under the HIPC initiative. The MDRI covered the full stock of debt owed to the IMF at end-2004 that remained outstanding at the time the country qualified for such relief.

204. To be eligible for the HIPC initiative, a country had to fulfil four criteria: it had to be burdened by an unsustainable debt situation even after the application of traditional debt relief mechanisms; it had to be eligible for borrowing from the IDA and the IMF PRGT under highly concessional terms; it had to establish a track record of reform and sound policies through IMF and World Bank-supported programmes; and it had to implement a Poverty Reduction Strategy (PRS) (on which *see infra*, paragraphs 256 ff.). The country was declared formally eligible to obtain *interim* debt relief by the IMF and World Bank Executive Boards at the so-called decision point.

205. In order to receive the *full* debt relief committed by the IMF and the World Bank, the country had to meet other requirements: establish a further track record of good performance under an IMF-supported programme and achieve macroeconomic stability; carry out the structural and social reforms agreed at decision point; and implement a PRS for at least one year. Only at the so-called completion point, therefore, the country 'graduated' from the HIPC initiative, receiving the assistance still necessary to reach debt sustainability.

206. As of July 2018, of the thirty-nine countries eligible to receive debt relief under the HIPC initiative, thirty-six countries reached the completion point, also receiving stock-of-debt treatment by Paris Club creditors. The remaining three – Eritrea, Somalia and Sudan – have not met the decision point qualifications or have not taken steps to enter the process, often because of an ongoing conflict situation. The HIPC initiative has been phased out since 2014, and it has not been replaced by a new instrument.

207. Even in the context of the HIPC initiative, the IMF and the IDA maintained their preferred creditor status. Debt relief was, in fact, provided through a mechanism that formally guaranteed that payments to the IMF/IDA would be made as they fell due. In practice, much of the debt relief was disbursed by a special Debt Relief Trust Fund, financed from IBRD income, or by special grants provided by the IMF. A portion of the HIPC debt was also allocated directly to member countries of the IDA as part of their replenishment contributions. These funds were used to buy back or repay portions of the debt owed by HIPC countries to the IDA and the IMF; in the alternative, the Trust Fund committed to pay a portion of the future debt-service owed to multilateral creditors as it fell due. Similar arrangements were adopted to provide debt relief under the MDRI.

Chapter 7. Reforming the International Monetary System

208. The volatility of the international capital markets and the magnitude of recurring financial crises have induced calls for a new architecture of the international monetary system. Various groups, including the G-7/8, the G-20, international organizations and NGOs have made proposals for a new design. Some proposals suggest creating global institutions to cope with current international financial and monetary problems. These institutions should have the features to act as: (i) a global lender of last resort (or a 'global central bank'); (ii) a global bankruptcy court (settling sovereign debts and providing a fresh start when countries cannot meet their international financial obligations) and (iii) a global financial regulator to exercise firm jurisdiction over states and non-sovereign actors. The latter proposal attempts to remedy the lacunae in supervision strengthening 'financial market surveillance'. Publication of documents and, generally, the promotion of transparency are key features of the new architecture.

209. The new architecture is expected to counter the increasing destabilizing effects of international capital markets consisting of a deeply connected web of international financial entities, including, among others, commercial banks, investment banks, private equity firms, insurance companies, pension funds and hedge funds. These entities usually buy and sell large quantities of securities, currencies or complex derivative instruments like collateralized debt obligations and credit default swaps. They may hedge against inflation and depreciation of currencies or engage in securities transactions that reduce the risk of an existing investment position. But they may also take short positions against currencies that are expected to depreciate. The relative strength of international capital markets vis-à-vis official actors has substantially increased. Due to their size and their limited concerns for global financial stability, financial markets may cause substantial damage to the global economy. As explained above, since the Fund has only limited jurisdiction to supervise financial markets' behaviours, a new architecture might develop to oversee and regulate financial markets in addition to overseeing monetary and economic performance of countries.

210. In 2009, the G-20 established the Financial Stability Board (FSB), an international body which includes all the G-20 countries as well as representatives of the IMF, the World Bank, the OECD, the BIS, international standard-setting bodies (like the Basel Committee on Banking Supervision), the ECB and the European Commission. The FSB's mandate is to promote international financial stability and to coordinate at international level the work of national financial authorities and international standard-setting bodies in order to identify vulnerabilities affecting the global financial system and actions needed to address them. In exercising this and its other functions, the FSB collaborates with the Fund, especially on surveillance over the financial sector (on the FSB *see also infra*, paragraphs 334 ff.).

Part III. IMF Lending

Introduction

211. According to Article I (v), one of the purposes of the IMF is 'to give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity'.

212. In the practice of the Fund, balance of payments support has become a dominant activity, virtually overshadowing other tasks. Whereas each member is entitled to balance of payments support, until recently Fund's resources have been predominantly borrowed by developing countries and countries in transition. The last decade, however, has witnessed a major shift in economic performance. Some developing countries have been able to accumulate monetary reserves or gained access to financial markets and thereby became less dependent on IMF resources. In contrast, the financial position of certain industrialized countries has worsened considerably; indebtedness, amplified by the fallout of the financial crisis in 2008, has increased to alarming levels. Since Italy and the UK received support from the Fund in the 1970s, Greece was the first advanced economy and Euro area country to receive financial assistance from the IMF and the EU in 2010. Ireland, Portugal and Cyprus followed shortly after.

Chapter 1. The Balance of Payments Problems

§1. The Balance of Payments

213. Each member country has to regularly report balance of payments data to the IMF. In order to promote uniformity in the bookkeeping and to facilitate analysis of the figures, the Fund gives directions to members about the way in which transactions are recorded. These directions are published in the 'Balance of Payments and International Investment Position Manual'. The figures relating to the balance of payments of member countries are published in the 'Balance of Payments Statistics Yearbook'.

214. The Fund defines the balance of payments as a statistical statement for a given period that summarizes transactions between residents and non-residents and consists of: the current account, the primary income account, the secondary income account, the capital account and the financial account.

215. The current account includes: (a) the balance of trade in goods and services; (b) the primary income; and (c) the secondary income between residents and non-residents. In particular, the goods and services account includes transactions in items that are outcomes of production activities. The current account balance shows the difference between the sum of exports and income receivable and the sum of imports and income payable.

216. The capital account shows: (a) the acquisition and disposal of non-produced, non-financial assets (like natural resources) between residents and non-residents and (b) capital transfers receivable and payable between residents and non-residents.

217. The financial account shows net acquisition and disposal of financial assets and liabilities.

§2. The Need for Support

218. A balance of payments problem occurs when a state imports more goods and services than it exports. The capital balance may also be negative because of flights of capital or investments abroad. As long as these deficits are limited and of short duration, official reserves can provide a solution. It is possible that after a time a surplus will arise so that the reserves can be brought back to the desired level. However, when the deficit is serious or difficult to shift, most countries may run into distress, as the reserves will be exhausted. In such cases two responses are possible.

219. First, it is possible to seek elsewhere for a means of covering the deficit. One option is for a country to offer sovereign bonds in a foreign currency, within or outside its own territory. Countries can also try to secure loans from commercial banks, operating on the market for currencies which are traded outside the country of issue. A state may also raise financial resources obtaining bilateral lending from other countries. This might take the shape of Official Development Assistance (according to the OECD, ODA is defined as assistance 'provided by official agencies, including state and local government, or by their executive agencies, each transaction of which: a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and b) is concessional in character and conveys a grant element of at least 25 percent'). Particularly for developing countries, calling on external financial sources does, however, have its limits. Often, the only source of credit, which does not entail future obligations, are grants. This particular source is, however, scarce. When the balance of payments position shows no signs of improvement, and the creditworthiness of the debtor country worsens, creditors will become ever more reluctant to furnish additional financial resources.

220. Second, a country can obtain financial assistance from the IMF and carry out an adjustment programme aimed at restoring the balance of payments equilibrium. Such a policy means that the government opts for economic reform through reducing government spending, adjusting exchange rates, fighting inflation and other measures. Adjustment is, in fact, unavoidable when confidence in the country concerned has fallen to such a level that new credits are no longer offered. The IMF has set itself the task of helping countries in setting up and carrying out adjustment programmes. The IMF has laid down that structural balance of payments deficits must be countered by policy measures aimed at reducing public spending, raising GDP growth, curbing inflation and achieving benchmarks for interest and exchange rates and other variables of economic and monetary policy. Simultaneously, the Fund provides short-term balance of payments support in order to cover immediate deficits.

§3. The Political Economy

221. Adjustment becomes necessary, for example, because circumstances in the preceding period have had an adverse effect on the balance of payments: for example excessive imports due to overconsumption, disappointing export revenues due to falling commodity prices, wrong exchange rate policy, misguided tax incentives, the flight of capital or unfocused investment policy. Some of these causes can be laid at the door of the country concerned, while others, such as falling raw materials prices, can hardly be blamed on the country. However, adjustment is inevitable, regardless of the cause of the balance of payments deficit, and regardless of whether the country itself is to blame for the deficit. Only when an unlimited appeal can be made on international credit, postponement of adjustment is possible.

222. Although the Fund cannot prevent adjustment, it can soften it. Member countries call on the organization's help in order to make the adjustment process proceed as smoothly as possible, without seriously endangering the economy. The Fund can also be requested to ensure that the adjustment happens in such a way that the socio-economic position of vulnerable groups is protected as far as possible. It may be expected that IMF-supported adjustment is more gradual and somewhat less painful than market-enforced adjustment.

223. There are several reasons why the IMF insists on adjustment. First, as credit will only temporarily be made available, the IMF wants to make sure that the member is able to pay back. In fact, one of the purposes of the Fund is to make its general resources *temporarily* available to member countries *under adequate safeguards* (Article I (v)). A member that does not reform and continues to spend foreign currency beyond its means will certainly not be able to repay. Second, the IMF must facilitate the expansion and balanced growth of international trade. Adjustment is expected to ensure that countries continue to participate in the world trading system. There may also be a third reason: countries running out of foreign reserves may become insolvent and create a risky environment for international banks and investors.

224. When an adjustment programme is being negotiated, negotiators of the IMF and the country in need may have fundamental differences of opinion. Parties will agree that reforms must be aimed at restoring equilibrium, but they may disagree on the best recipe to find it. In the end, parties may come up with a deal which is reflected in a document outlining the reforms (a memorandum of economic and financial policies (MEFP) attached to the country's letter of intent). What counts, of course, are effective changes in domestic economic policies. Changes usually include drastic budget cuts and tax reform, price liberalization, trade and foreign investment liberalization, privatization and private sector deregulation. Generally, adjustment follows a predetermined pattern, meaning that the public sector steps back while the private sector moves in.

225. Governments have not always been eager to seek IMF financial assistance. They would rather rely on unconditional support, which does not restrict political priorities. Although the Fund calls on its members to take timely measures, in practice members only turn to the Fund when other creditors have turned their backs, and the ship is threatening to sink or has already sunk. Unintentionally the Fund becomes a lender of last resort. This situation means that adjustment under Fund guidance often entails a radical change in economic policy. Painful choices have to be made. Interest groups who for years have been able to count on special benefits see their financial position undermined by economy drives as a part of Fund's conditionality (on which *see infra*, paragraphs 277 ff.). Social spending is cut, with a negative impact on health, school and pension systems. Government jobs are axed, and the military see their budgets melt away. A government must stand firm to resist the pressure from so many interest groups, and it is not unusual for the Fund, for political reasons, to take the blame for these painful measures. The IMF has been prepared to let these reproaches go unanswered, as a sort of silent contribution to the adjustment effort.

226. The Fund fulfils a pivotal function in the relation between the debtor country and its creditors. For creditors (like bondholders which invested in sovereign bonds issued by the country concerned), the Fund is competent to judge the creditworthiness of a country. Practically, all creditors trust the IMF's judgment and are only prepared to provide support (or debt relief) if the debtor, in consultation with the Fund, carries out an adjustment programme (on the Paris Club and the London Club *see supra*, paragraphs 191 ff.). As long as the Fund provides support, creditors will have faith that the adjustment programme is on the right track and will judge that the risks entailed in providing credit are acceptable. The debtor country also realizes that creditors will place their trust in an adjustment programme which meets with the Fund's approval.

227. There may also be another reason why the finance minister and central bank governor of the requesting country adhere to IMF-supported programmes. These authorities, responsible for financial and monetary policy, try to strengthen their position vis-à-vis their government in seeking support from the IMF. Backed up by the Fund, they hope to induce greater fiscal discipline among their fellow ministers.

Chapter 2. IMF Financial Assistance

228. According to the principle of uniform treatment, access to the Fund's general resources is equally open to all members, irrespective of the state of their economic development. Until recently, only developing countries and members in transition have drawn on the IMF resources. Since the start of the global financial crisis, though, four members of the Euro area – Greece, Portugal, Ireland and Cyprus – received IMF support.

229. A member country may request IMF financial assistance if it has a balance of payments need (present, prospective or potential), that is if it cannot find sufficient financing on affordable terms to meet its net international payments (e.g., for imports or external debt redemptions) while maintaining adequate reserve buffers. A request may be made under the condition that the Fund's resources would be used in accordance with the provisions of the Articles and of the IMF policies subsequently adopted.

230. Upon request by a member country, the IMF provides its resources through a lending arrangement. The loan is intended to facilitate the adjustment policies and reforms that a country must make to correct its balance of payments problem and restore conditions for strong economic growth. Financing can be provided through a variety of lending facilities.

§1. IMF Facilities

231. IMF lending has evolved over the years. Originally, the IMF could only provide outright disbursement to requesting countries subject to an assertion of an actual or potential balance of payments need. The practice of lending in tranches through Stand-By Arrangements was introduced in 1952 and formalized by the 1978 Second Amendment to the IMF Articles of Agreement. It was not until the 1960s that the Fund introduced 'special' facilities (or lending windows) to address the specific balance of payments problems for which ordinary Stand-By Arrangements would prove inadequate or insufficient. Only in the mid-1970s, the Fund started lending to LICs on concessional terms through trust funds separate from its general resources.

232. It should be recalled that according to the principle of uniformity, no distinction is allowed between member countries based on their stage of development for what concerns both the reserve tranche and the upper credit tranche policy (on which *see infra*, paragraphs 243 ff.). However, to overcome this limitation on the use of the Fund's general resources disbursed from the GRA, lending activities have been organized also under various 'facilities' to better take into account the specific circumstances of its members.

233. Facilities can be divided into two broad categories: (a) non-concessional facilities for countries with sound fundamentals experiencing a balance of payments problem; and (b) concessional facilities tailored to address the specific circumstances of LICs. Each facility establishes: the maximum amount a member may borrow; different disbursement schedules (phasing), maturities and charges; the type of conditionality connected to the loan; as well as procedures for reviewing the borrowing country's performance under the arrangement. LICs may usually borrow on more favourable terms, such as reduced charges, and may be granted a grace period. The Fund can also establish administered accounts (financed through voluntary contributions by its members) to provide countries with financial and technical services.

234. The legal basis for the adoption of *non-concessional facilities* is Article V, section 3(a), under which the Fund adopts specific policies on the use of its general resources for a set of balance of payments problems. The establishment or modification of special facilities requires the approval of Executive Directors representing at least 85% of the voting power. Currently, non-concessional loans are provided through Stand-By Arrangements (SBAs), the Flexible Credit Line (FCL), the Precautionary and Liquidity Line (PLL) and the Extended Fund Facility (EFF). The IMF can also provide members facing urgent balance of payments needs with emergency assistance via the Rapid Financing Instrument (RFI). All non-concessional facilities are subject to the payment of the IMF's market-related interest rate, known as the 'rate of charge' which is based on the SDR interest rate. Financial assistance provided under non-concessional facilities is always disbursed through the GRA.

235. SBAs, under which countries are given financial support to address short-term balance of payments problems, are the main lending instruments of the IMF. Programmes are designed to address these problems and disbursements are made conditional on achieving these targets. The length of an SBA is typically twelve to eighteen months (with a maximum duration of three years), and repayment is due within 3¼–5 years of disbursement. SBAs may be provided on a precautionary basis: in this case, countries choose not to draw upon approved amounts but retain the option to do so if conditions deteriorate. The SBA provides for flexibility with respect to phasing, with front-loaded access where appropriate.

236. The FCL is designed to help states with strong fundamentals and track records of policy implementation to meet a pre-established set of qualification criteria. FCL arrangements are approved at the member country's request for a period of one or two years. Under the FCL, a single upfront disbursement is usually made available to the requesting country, without further conditionality to apply.

237. The PLL is designed to assist countries with sound fundamentals which, however, do not meet the FCL qualification standards. The PLL combines ex ante and ex post conditionality.

238. The EFF was established in 1974 to address members with medium- and longer-term balance of payments problems. Its use has increased substantially in the recent crisis period, reflecting the structural nature of some members' balance of payments problems. Arrangements under the EFF are typically longer than SBAs, with a maximum duration of four years. This duration reflects the prolonged nature of the adjustment required to restore macroeconomic stability and the presence of adequate assurances about the member's ability and willingness to implement deep and sustained structural reforms. Repayment is due within 4½–10 years from the date of disbursement.

239. The RFI provides rapid and low-access financial assistance to member countries facing an urgent balance of payments need (including those arising from natural disasters, conflict and post-conflict situations and commodity price shocks), without the need to have a full-fledged programme in place.

240. The IMF started to provide *concessional financing* to developing countries in 1976 through its Trust Fund (terminated in 1981), funded by the proceeds of IMF gold sales. The establishment of the Trust Fund was, therefore, a departure from the principle that general resources should be made available for all member countries on an equitable basis. This principle was meant to prevent discrimination among members on the basis of their stage of development and to ensure reasonable uniformity in accessing IMF resources and in loan conditions. With the 1978 Second Amendment to the IMF Articles of Agreement, special provisions were introduced to allow the allocation of surplus proceeds from IMF sales of gold to concessional lending. Thus, balance of payments assistance could be made available on special terms to developing countries in difficult circumstances and for this purpose the Fund could take into account the level of pro-capita income.

241. In 2009, in order to provide financial assistance to LICs in a more effective way, the IMF reformed its concessional lending framework and transformed the Poverty Reduction and Growth Facility into the PRGT. The trust is funded through bilateral loan agreements at market rates and by donations from members or reserves available within the Fund (for instance, reserves deriving from the 2009–2010 gold sales). A country can receive concessional lending from the PRGT if it is unable to access international financial markets on a substantial basis and it is eligible for IDA support. Under the PRGT, the IMF operates as trustee and provides loans on concessional terms (zero interest rates) to LICs. The PRGT covers three facilities: the Extended Credit Facility (ECF), the Standby Credit Facility (SCF) and the Rapid Credit Facility (RCF). The ECF is now the Fund's main tool for providing medium-term support to LICs with protracted balance of payments problems. The SCF provides financial assistance to LICs with short-term balance of payments needs. The RCF provides rapid financial assistance with limited conditionality to LICs facing an urgent balance of payments need. Each facility establishes specific criteria for eligibility.

242. As a complement to the PRGT, the Policy Support Instrument (PSI) provides LICs that do not have a current or prospective balance of payments need (and therefore do not need IMF financial assistance) with a tool to obtain Fund advice without a borrowing arrangement. IMF support takes the form of regular assessments of the country's economic and financial policies.

§2. The Reserve Tranche Position and the Upper Credit Tranche Policy

243. Before requesting IMF financial assistance, a member can draw on its 'reserve tranche' a portion of its quota which is in many aspects similar to a demand deposit in a commercial bank. A member's reserve tranche is considered part of its external reserves and a liquid claim on the Fund. A country can, in fact, draw up to the full amount of its reserve tranche position at its own discretion and at any time, subject only to the member's representation of a balance of payments need. A reserve tranche drawing does not constitute a use of IMF credit and is not subject to charges or to an expectation or obligation to repay (repurchase) those funds to the IMF. Moreover, purchases in the reserve tranche are unconditional. This means that the reserve tranche can be immediately bought back and added to the reserves without the IMF applying its conditionality policy (on which *see infra*, paragraphs 277 ff.).

244. The reserve tranche of a country is equal to the difference between the member's quota and the IMF's holdings of its national currency, excluding any holdings of the currency stemming from the use of IMF credit. Initially, it typically corresponds to the portion of the member's quota which is paid in widely accepted foreign currency (25% of the quota). The exact amount of the reserve tranche, however, also reflects the members' use of IMF resources. In fact, reserve tranche positions in the IMF arise not only from the payments for quota subscriptions but also – for members with strong external positions – from the sale by the IMF of their currencies to meet the demand for IMF resources by other members in need of balance of payments support. As soon as member country A makes a purchase, the percentage of its national currency within the GRA increases. It is also possible that the IMF sells the currency of member A to member B so that its amount in the GRA is again reduced, and member A's reserve tranche position improves.

245. If the country needs an amount of foreign currencies which exceeds its 'reserve tranche position in the IMF', it should seek financial assistance under the 'tranche policy'. However, there is no obligation to draw on the reserve tranche before making a loan request.

246. Outside the reserve tranche, IMF credit is subject to phasing and increased conditionality. Drawings in the 'upper credit tranches' (any segment above 25% of quota) are made in instalments, i.e., purchases are phased in what are termed 'the first credit tranche', 'the second credit tranche', 'the third credit tranche', etc. Conditionality increases with access and purchases in the higher tranches. Performance criteria and periodic reviews are used to assess programme implementation. Such drawings are normally associated with a Stand-By or Extended Arrangement.

§3. Purchasing Currencies from the Fund

247. According to Article V, section 2(a), the IMF provides financing in the upper credit tranches through a specific 'purchase-repurchase mechanism', which is the functional equivalent of a loan. In practice, the IMF lends GRA resources by selling its internationally widely accepted currency holdings to borrowing countries in exchange for their domestic currency. In other words, member countries 'purchase' foreign currencies (or SDRs) from the IMF with an equivalent amount of their own currency (or by depositing promissory notes). The country is under the obligation to 'repurchase' (or buy back) its own currency with a currency selected by the Fund within a specified time. The loan is considered repaid when the borrower repurchases its currency from the IMF in exchange for reserve assets. The 'purchase/repurchase approach' to IMF lending affects only the composition of the IMF's resources held in the GRA, but not their overall value. On these drawings (which takes place in the upper credit tranches), a charge has to be paid, which in practice is equivalent to market interest rates.

248. Under Article V, section 2(b), the member 'shall be entitled to purchase currencies of other members from the Fund in exchange for an equivalent amount of its own currency'. It is important to note that members are 'entitled' to receive support, meaning that membership already creates an initial right. The IMF merely determines the conditions under which the purchase may be made.

249. According to Article V, section 3(a), the Fund must adopt policies on the use of its general resources. These policies must ensure that balance of payments problems are solved consistently with the IMF Articles of Agreement and that 'adequate safeguards for the temporary use' of the Fund's resources are established. Temporary use is ensured by repurchase obligations: a member must buy back from the Fund its own currency after it has used the foreign currency 'temporarily'.

250. After the member has made a request, the Fund shall examine it and determine its consistency with IMF Articles and policies. Under Article V, section 3(d), (e) and (f), arrangements will be made on the selection of currencies to be sold and on the exchange rate to be used. Resources made available by the Fund must be SDRs or 'freely usable currencies', i.e., currencies that are widely used to make payments for international transactions and are widely traded in the principal exchange markets.

251. In practice, member countries with a sufficiently strong balance of payments and reserve position provide the Fund with 'usable currencies' which constitute the 'operational budget' of the Fund. 'Usable currencies' are then converted into a 'freely usable currency' (the US Dollar, Euro, Renminbi, Yen and Pound Sterling). In 2016, fifty-one IMF members were in the position to provide usable currencies. Said members receive remuneration based on the SDR interest rate.

§4. The Access Policy

252. The access policy defines the maximum extent of financing a member can obtain from the Fund based on the size of its quota. The maximum amount that a country can borrow from the IMF, known as its access limit, varies depending on the type of loan but is typically a multiple of the member's quota. Access limits under the different lending facilities (such as the GRA upper credit tranches, the EFF, the PRGT) are reviewed by the Executive Board every two years, taking into account potential demand for Fund resources and developments in the IMF liquidity position.

253. According to the access limits to the Fund's general resources established in 2016, a member can borrow up to 145% of its quota annually and 435% cumulatively. This means that, in a year, a member can make conditional purchases of the requested currency until the Fund holds 145% of the member's quota in its national currency, without exceeding the upper limit of 435%.

254. In exceptional circumstances (e.g., during the Mexican crisis of 1994–1995 and the Asian crisis of 1997–1998), the Fund may grant access above normal limits. In 2002 the Fund decided to formalize conditions for the use of exceptional access. The 2002 Exceptional Access Policy set forth both procedural and substantive requirements. One of the four substantive criteria was 'the high probability that the member's public debt is sustainable in the medium term'.

255. During the European sovereign debt crisis, however, the Executive Board decided to revise the exceptional access policy criterion on debt sustainability in order to make it possible to lend to Greece. In May 2010, Greece needed financing amounting to 3200% of its quota, well above the access limits. On top of that, the IMF seriously doubted that the Greek debt was sustainable without a restructuring, which was, however, strongly opposed by European institutions. In order to grant exceptional access to Greece without seeking pre-emptive debt restructuring, a major revision of the exceptional access policy was adopted, introducing the option of granting an exemption to the debt sustainability criterion. According to the amendment, exceptional access could be granted if it were judged that a debt restructuring needed to ensure a high probability of debt sustainability would have 'adverse international spillover effects'. This significant policy change was not thoroughly discussed, and the modification process was not at all transparent (as pointed out by the IEO in its 2016 'Report on the IMF and the Crises in Greece, Ireland and Portugal'). The new criteria were later applied also to Ireland and Portugal, creating the impression of a preferential treatment for Europe. The exceptional access policy was only reviewed in 2016. The new Executive Board decision eliminated the systemic spillover waiver and introduced the option to provide access in situations where debt is considered sustainable but not with a high probability, provided that certain additional requirements are met.

§5. Poverty Reduction Strategies

256. Poverty Reduction Strategies (PRSs) were first adopted by the IMF and the World Bank in 1999 in the context of the Heavily Indebted Poor Countries initiative (HIPC) (*see supra*, paragraphs 202 ff.). After the 2009 reform of the IMF concessional facilities, PRSs remain the basis of financial assistance disbursed under the ECF and PSI programmes. They are an important basis for a comprehensive country-based strategy for poverty reduction. Problems in developing countries are often interlinked and cannot be dealt with through isolated measures. A PRS describes the macroeconomic, structural and social policies and programmes that a country will pursue over several years to promote growth and reduce poverty, identifying external financing needs and major sources of financing. PRSs are adopted by the member country through a participatory process involving domestic stakeholders, external donors and development partners, among which the IMF and the World Bank. PRSs describe the country's strategy for poverty reduction and promote national 'ownership' through a broad-based participation of the civil society (in this differing from letters of intent).

257. PRSs not only serve as a basis for IMF and World Bank programmes but may also be significant for other IOs as the ensuing programmes are aimed at the promotion of economic development. Specialized agencies, in particular, may become involved in the setting up of programmes because of their expertise and their capacity to provide additional credit. The Fund encourages widespread public discussion and examination of PRSs, provided that the approval of the member is obtained. The Executive Board does perceive the necessity for cooperation with specialized agencies. Concerning the social consequences of adjustment, however, experts from the United Nations Children's Fund (UNICEF), the UNDP and the International Labour Organization (ILO) participate in discussions about the IMF-supported programme only occasionally. These and other organizations are far better placed than the IMF to make a judgment about a country's socio-economic situation; they can also evaluate, better than the Fund, the effects of adjustment on the various socio-economic sectors. The Fund, however, does not proactively look for their involvement.

Chapter 3. The IMF and Fragile and Conflict-Affected Countries

258. Fragile and Conflict-Affected Countries (FCSs) exhibit institutional and policy implementation weaknesses and are more prone to fall into a vicious circle of conflict and instability (the so-called fragility trap). Low levels of income and rate of growth increase the risks of conflict. Economic development is therefore critical to prevent lapse or relapse into conflict.

259. The challenges posed by FCSs are complex. Their economic performance is weak as well as their ability to deliver basic social services. They are likely to have negative spillovers on neighbouring countries (e.g., because of refugee flows or humanitarian crises). They are usually overborne by high levels of debt and protracted payments arrears and unable to attract external assistance and investments. Moreover, even when rich of natural resources, this might result in violence, corruption, mismanagement and the enrichment of very few (the so-called resource curse).

260. FCSs tend to receive considerably less external assistance than other LICs. Overcoming their deep-seated capacity constraints and moving to sustained stability and growth requires long-term support and the coherent, coordinated and complementary engagement of the international community.

§1. Staff-Monitored Programmes

261. Until the 1990s, the IMF engaged with FCSs mainly through its usual instruments: surveillance, staff-monitored programmes (SMPs) and technical assistance.

262. SMPs in particular are a special instrument applied by the Fund when a borrowing arrangement with a country is not feasible. They are approved by IMF management, without formal Executive Board approval. They do not entail a formal endorsement of the country’s policies by the IMF Executive Board or any kind of resources commitment from the Fund. Rather, they provide the Fund with a tool to review a member’s economic situation and provide policy advice outside the context of Article IV consultations or an IMF-supported programme.

263. A country can resort to SMPs when it has a limited institutional capacity or experiences domestic instability or when a previously negotiated IMF-supported programme has gone off-track. SMPs purpose is to help a Member State establishing a track record of good performance that could pave the way for the provision of emergency assistance, the conclusion of a standard financial arrangement, or the resumption of an existing arrangement.

264. SMPs are not made subject to conditionality requirements but are based on a macroeconomic policy framework to be monitored by the IMF staff which includes quarterly performance benchmarks. On the basis of an informal agreement, the Fund staff closely monitors the implementation of the country's economic programme and meets regularly with national authorities to discuss progress in achieving predefined targets. SMPs normal duration is six to eighteen months, to be extended in special circumstances if performance is not satisfactory. The features of the country's economic programme are usually outlined in a letter of intent.

265. This non-financial arrangement became an important instrument in the IMF toolkit at the end of the 1990s (when an internal guidance note on their use was adopted), but it is still in use today. In many cases, to keep the momentum of policy reform, recourse to SMPs was reiterated for subsequent periods of time. After undergoing SMPs, most of the countries moved to a regular IMF-supported programme.

266. For instance, in the case of Liberia, a country torn apart by prolonged periods of civil war, an SMP could be started only in 2006 after democratic elections. The key objectives of the SMP were to rebuild public institutions, restore a credible financial management and accelerate structural reforms. Thanks to the successful implementation of the SMP, Liberia moved to a Poverty Reduction and Growth Facility arrangement in 2008 and received debt relief under the HIPC initiative in 2010, after clearing its arrears with the Fund.

§2. The Emergency Post-Conflict Assistance policy

267. After the crises of the early 1990s (the first Gulf War, the collapses of the Soviet Union and of the Socialist Federal Republic of Yugoslavia, the genocide in Rwanda), the IMF adopted the Emergency Post-Conflict Assistance policy (EPCA), broadening the scope of its emergency assistance – originally intended only to help countries hit by natural disasters – to include states emerging from civil unrest or international armed conflict. The EPCA policy was repealed in 2009.

268. The decision to introduce a special lending policy, rather than creating a facility, was not taken unanimously: several Executive Directors argued that the provision of post-conflict assistance – which fell within the primary responsibilities of aid agencies and multilateral development banks – would threaten the monetary character of the IMF. It was recognized, however, that both natural disasters and conflicts caused temporary negative shocks and severe economic imbalances, requiring a relatively short period of emergency assistance before a standard IMF arrangement could be negotiated.

269. Eligible to borrow under the EPCA were only post-conflict countries lacking the institutional and administrative capacity to develop and implement a comprehensive IMF-supported programme and facing an urgent balance of payments need. A demonstrated commitment on the part of the authorities and sufficient capacity for policy planning and implementation was nonetheless required by the Fund as an adequate safeguard for the use of its resources.

270. National authorities were not required to produce a formal letter of intent, but conditions for EPCA assistance included a description of the country's economic policies, a quantified macroeconomic framework (to the extent possible) and a statement from the authorities to be ready to move as soon as possible to a standard arrangement with the Fund. EPCA assistance was essentially aimed at rebuilding external reserves and meeting essential external payments (including payments to multilaterals), but it focused also on reinforcing the country's administrative and institutional capacity.

271. Even if the first country to borrow under the EPCA policy was Bosnia and Herzegovina, between 1995 and 2005 the IMF emergency post-conflict assistance was mainly directed at African countries. Most of them had previously undergone an SMP.

§3. Review of the IMF's Engagement with FCSs

272. In 2009, the IMF reformed its concessional lending facilities with a view to make support to LICs more flexible and tailored to their specific and diverse needs. Under the new architecture, all concessional facilities were placed under the umbrella of the PRGT and the EPCA policy was replaced by the RFI and the RCF (on which *see supra*, paragraphs 239 and 241). While the RFI is available to all member countries, only LICs are eligible to receive assistance under the RCF. Since 2011, RCF lending has been delivered to low-income fragile countries de facto replacing SMPs. In 2015, the Catastrophe Containment and Relief Trust was also introduced. Through the Trust, the IMF provides grants for debt service relief to poor and vulnerable countries hit by catastrophic natural or public health disasters.

273. In recent years, the growing recognition by the international community that conflict and fragility are the key impediments to development prompted the IMF to revise its engagement in fragile states. The IMF currently defines fragile (1) a low-income country, eligible for IDA assistance, having weak institutional capacity in the political, security and economic sectors as measured by the World Bank on the basis of the Country Policy and Institutional Assessment score (CPIA); or (2) any country that experienced a period of conflict signaled by the presence of a peacekeeping or peace-building operation in the most recent three-year period or for which the CPIA has not been computed because of conflict. Accordingly, the IMF list of FCSs is updated once a year, but only the 2015 list has been disclosed to the public.

274. Despite FCSs' specific needs and challenges, the Fund has not modified its long-established practice of not differentiating fragile countries from low- or middle-income members. No specific facility is dedicated to FCSs.

275. Consistent with this approach, in 2012 the Fund adopted the 'Staff Guidance Note on the Fund's Engagement with Countries in Fragile Situations' to outline the principles for its engagement with fragile countries. The main recommendations for the Fund's staff are the following: in giving its policy advice, the Fund should focus on policy measures that increase social cohesion and that do not place undue stress on the political and social fabric; the pace of macroeconomic adjustment should be carefully tailored to the country specificities and not overambitious, with a proper sequencing of reforms; attention should be paid to job creation and the preservation of social expenditure (in particular social safety nets), with a view to overcome social cleavages; capacity-building support should be implemented in close coordination with other development partners, such as the World Bank; and, last but not least, the reform agenda needs to be endorsed and owned by the government.

276. In 2018, the IEO published a report on 'The IMF and Fragile States'. While recognizing the important contributions made by the IMF in FCSs, including helping to restore macroeconomic stability, build core macroeconomic policy institutions, and catalyse donor support, the IEO highlighted numerous shortcomings. It considered the IMF's financial toolkit, with its relatively short-term focus, not well suited to the circumstances of fragile states. Initiatives to adapt IMF policies and practices to FCSs' needs fell short of expectations, 'leaving questions about the credibility of the Fund's commitment in this area'. Finally, for what concerns collaboration with development partners – given their differing institutional mandates, priorities, and budget cycles – strategic coordination proved difficult to be achieved.

Chapter 4. IMF Conditionality

277. The IMF's 'conditionality policy' refers to the body of policies and procedures adopted by the Fund to govern the use of its resources in a manner that fulfils the purposes of the Articles. Conditionality plays an important role as it provides assurance to the Fund that the country will be able to repay its loan and that resources will be made available to other countries. Conditionality thus embodies the *adequate safeguards* clause under which, according to Article I (v) and Article V, section 3(a), the Fund can make its general resources *temporarily available* to members. At the same time, it helps countries solve their balance of payments problems 'without resorting to measures destructive of national or international prosperity'.

278. In parallel, the term 'conditionality' refers to the policies a member is required to follow in order to be able to use the Fund's resources. When a country borrows from the Fund, it agrees to implement macroeconomic and structural reforms to overcome the crisis and restore growth and stability. Policy adjustment and conditionality makes the IMF 'co-author' of economic policies and co-responsible for the consequences of adjustment.

279. Just like a government makes policy choices that reflect political, moral and legal values, the IMF must also give them consideration. In light of the IMF's practice to insist on firm adjustment efforts, incisive questions on the scope of conditionality may be asked. Can the IMF ask for the closing down of state-subsidized hospitals and schools? Can it demand a policy by which parents must pay a user's fee for their children in primary school? What are the ethics of the IMF? Does it consider itself to be bound by human rights?

280. Searching for values and human rights in the IMF Articles does not produce clear answers. According to the Articles, the IMF must avoid measures that are harmful to national or international prosperity, but this has little practical meaning for the protection of non-economic values without a proper interpretation. Significant is an opinion of the IMF's General Counsel on the relationship between the Fund and the UN Covenant on Economic, Social and Cultural Rights (1966). The opinion suggests that the IMF is factually contributing to the promotion of socio-economic standards, by creating a more prosperous economy in the long term. The opinion also maintains, though, that the IMF is not legally bound by the Covenant because it is not a party. Some authors, proceeding on the assumption that human rights are part of a larger framework of international law, argue instead that both the IMF and the World Bank are bound to respect customary human rights obligations in their activities (on the IMF and human rights, *see also infra*, paragraphs 346 ff.).

281. Sovereignty and political independence are also relevant legal notions. In negotiations with country officials it may be tempting for the IMF to ignore such concepts. Critics contend that the IMF encroaches upon national sovereignty, serves as a tool of the wealthiest countries and exacerbates economic problems worsening the living standards of the poor, focusing on privatization, market deregulation and austerity measures. In July 2017, for instance, the UN Independent Expert on the promotion of a democratic and equitable economic order affirmed that the IMF imposes conditions 'which discourage social spending and therefore hinder States' fulfilment of their human rights obligations. Often these conditions increase unemployment, lower standards governing labour, health and the environment, and reduce access to free quality education'. He concluded that the IMF lending policies, thus, undermine human rights and development policies and the work of other international organizations.

282. Besides, it is worth noting that the IMF lends to countries with a balance of payments problems even if they have very poor human rights records.

§1. Guidelines on Conditionality

283. In the past, countries have reproached the IMF with intrusions of sovereignty. Developing countries also accused the IMF of unequal treatment. This has prompted the Fund to adopt back in 1979 its Guidelines on Conditionality. In 2002, the Guidelines were revised and later supplemented by Operational Guidance Notes for assisting the staff in discussions with members. In March 2009, the IMF further modernized its conditionality framework. Since then, structural benchmarks do not require formal waivers if they are not met, but structural reforms, tailored to member countries' different economic situations, are assessed in the context of the review of the overall programme performance (on this point *see infra*, paragraphs 305–306). In 2014, the Fund adopted the 'Revised Operational Guidance to IMF Staff on the 2002 Conditionality Guidelines'. A thorough review of conditionality was started in 2018 to assess programme design since the global financial crisis, but it still has to be completed.

284. The 2002 Guidelines on Conditionality – which are still relevant today – deal with 'principles' and 'modalities' of conditionality. They are complemented by the 2014 Revised Operational Guidance to IMF staff.

285. The first guideline emphasizes that Fund resources are provided for resolving balance of payments problems only. Being a least developing country or a fragile state (*see supra*, paragraphs 258 ff.) cannot per se give reason for financial assistance.

286. Guideline 2 explains that conditional balance of payments support is one of the ways in which the IMF helps members to strengthen their economic and financial policies. Article IV consultations, as discussed above, may also signal developments that raise concern. The IMF suggests to members not to postpone difficult decisions.

287. In Guideline 3, the Fund acknowledges that programmes cannot be imposed on countries. In the past, too often the IMF prescribed the required policies to governments. Governments were asked to sign documents on policy reforms that were prearranged by IMF missions. The Guidelines explain that 'the member has primary responsibility for the selection, design and implementation of its economic and financial policies' and stresses that 'national ownership of sound economic and financial policies and an adequate administrative capacity are crucial for successful implementation of Fund-supported programmes'. This is an important warning sign to all IMF missions to listen carefully to government officials. There must also be an appropriate institutional framework for the implementation of programme reforms. The 2014 Revised Operational Guidance to IMF Staff further clarifies that the Fund's staff should 'seek the views of country authorities early and make every effort to accommodate their preferences and policy choices – including on growth, labour market and distributional targets – where possible, subject to consistency with resolving balance-of-payments problems, macroeconomic stability, and all other program goals'. By stressing that the programme is country-owned, the IMF attempts to prevent that it will be named a scapegoat, as it has often happened. Many governments conveniently blamed the IMF for painful measures: 'we do not want this, but the IMF forces us to do so.' Governments may not always like the idea that they must take full responsibility for adjustment policies.

288. Guideline 4 explains that: 'in helping members to devise economic and financial programmes, the Fund will pay due regard to the domestic social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems and their administrative capacity to implement reforms'. The language of this principle suggests some leeway for preserving domestic policies when an adjustment programme is put in place. In reality the latitude is limited. First, 'due regard' does not mean 'respect' and does not compel the IMF to give overriding force to domestic policies. If the economic consequences of domestic choices conflict with IMF policies, the latter will prevail. A second caveat is that the Fund's policies interfering with sovereign decision-making have been expanded in the 1990s. Significant is the IMF Standards and Codes Initiative (on which *see supra*, paragraph 153), under which since the end of the 1990s the Fund endorsed twelve internationally recognized standards and adopted a set of guidelines and codes to strengthen the international financial system. With the proliferation and application of codes and standards, the IMF is increasingly interfering with decision-making in areas that traditionally belonged to the exclusive domain of governments. Guideline 4 also mentions 'past performance' as a relevant circumstance. This refers to behaviour of members in previous periods. In the past, some countries have misled the IMF by offering false economic data to demonstrate that programmes were on track.

289. Guideline 5 expresses the principle of 'consistent application of policies' to maintain uniform treatment of members. Non-discrimination is an important principle, but it is difficult to prove that uniform treatment has not taken place since the economic circumstances of countries will never be the same. Besides, capacity and commitment of the requesting country are other important criteria for providing credit. This principle also explains the key role of the IMF's management. The Managing Director has to rely on the judgment of IMF missions that negotiate the programme. It will be difficult for the Executive Board to denounce the recommendation of the Managing Director (on procedure and modalities *see infra*, paragraphs 295 ff.). Staff in the IMF has a high responsibility for vigilant judgments.

290. Guideline 6 provides that the Fund's balance of payments support should be directed primarily towards solving the member's balance of payments problem 'without recourse to measures destructive of national or international prosperity' (as provided also by Article I (v)). The provision is softly phrased, and it is unclear what is meant by 'prosperity' and whose prosperity should be preserved. Does prosperity refer to GDP or socio-economic standards? Obviously, it will be difficult to keep all parties involved prosperous when an adjustment programme is in place. Moreover, a programme must aim to achieve 'medium-term external viability while fostering sustainable economic growth'. Significant is 'fostering', which suggests that the IMF does not directly promote 'sustainable' economic growth, but principally paves the way towards 'growth' focusing on macroeconomic policy issues rather than on broad development priorities.

291. Guideline 7 explains that programme-related conditions governing the provision of Fund resources will be applied 'parsimoniously'. Parsimoniously means restrictively. This is to avoid the proliferation of conditions that in the past plagued many countries under IMF scrutiny. The conditions should also be of 'critical importance' for achieving programme goals. According to the 2014 Revised Operational Guidance to IMF Staff, 'a judgment that a condition is of critical importance means that if it was not implemented, it is expected that the goals would not be achieved or that programme monitoring would not be possible. Conversely, all critical measures generally must have conditionality associated with them, because the Fund needs to be able to interrupt purchases or disbursements if the program is off track or if sufficient information is not being provided to adequately monitor program implementation'. Again, attention should be given to the 'policies' clause. As explained above the IMF has not been 'parsimonious' in developing new policies. In practice, more policies mean more conditions. Furthermore, the IMF will impose conditions that 'normally consist of macroeconomic variables and structural measures' within the Fund's mandate (core areas of responsibility). Inclusion of non-macroeconomic variables must be explicitly motivated. Macroeconomic variables have not been defined, but likely they refer to aggregate data. Accordingly, the IMF may ask for a reduction in overall government spending, but it should not systematically impose conditions on a detailed scheme for such reductions. Structural measures first introduced in the 1980s have also been a source of major controversy because related conditions were considered to go beyond the Fund's mandate. Structural adjustment programmes, in fact, saw the IMF's involvement in sensitive policy areas such as the privatization of state-owned enterprises, trade and financial liberalization, labour market reforms and social policies. In 2009, the Fund decided that structural performance criteria would no longer be part of the conditionality framework. Since then, recourse to structural measures in IMF conditionality reduced only marginally and during the global financial crisis structural conditions became a growing component of IMF programmes.

292. Guideline 8 addresses cross-conditionality and the relationship with the World Bank. Debtor countries fear the domino effect of conditionalities imposed by various international financial institutions and creditors. If a debtor failed to meet the conditions of one creditor, other creditors could subsequently decide to cut off their credit lines. The Fund commits itself not to apply this so-called cross-conditionality. There is also an acknowledgement that cooperation with other institutions, notably the World Bank, is imperative. Both organizations tend to overlap in their activities, and, in some occasions, their activities may even result to be in conflict. The more the IMF became concerned with structural reforms – e.g., the liberalization of trade or reform of economic sectors – the more cooperation was required in these areas. In their cooperation agreement (the Concordat, on which *see infra*, paragraphs 361 ff.), the IMF and the World Bank have accepted the concept of 'lead agency'. Depending on the reforms required, one institution would take primary responsibility, with the other expected to follow.

293. The Guidelines do not address the problem of socio-economic consequences following adjustment. However, adjustment must take into account the plight of the poor, and the 'national prosperity' clause of Article I(v) should be applied: adjustment should be carried out 'without resorting to measures destructive of national or international prosperity'. Accordingly, the Guidelines could have clarified that international human rights standards be upheld during adjustment. For that purpose, the Guidelines could indicate that the Fund must cooperate with appropriate UN bodies, such as the treaty-based Committee on Economic, Social and Cultural Rights. It is worth noting that the 2014 Revised Operational Guidance incorporates guidance on conditionality related to macro-social (jobs and growth) issues, affirming that 'where feasible and appropriate, policy measures to mitigate adverse impacts on the most vulnerable should be included in program design'.

294. Another inherent flaw is the absence of even a basic dispute settlement provision. States may disagree with the Fund and they may be wrong or right. The point is that the Fund's view will always prevail even when this view is illegitimate or unlawful. In the final analysis, the IMF interprets the Guidelines without any corrective procedure. The Fund might take the World Bank as an example. The Bank has established an independent Inspection Panel for the purpose of providing people directly affected by a World Bank project with an independent forum through which they can request the Bank to act in accordance with its own policies and procedures. Accordingly, the IMF should create a procedure for member countries that believe that the Fund is failing to observe its Articles of Agreement or implementing decisions. A member country should have the opportunity to ask the IMF not to insist on conditionality that implies a breach of the member's international obligations. An example of such controversial policy was the IMF's insistence on the introduction of a 'user fee' for basic services in health and education. For instance, a user fee for primary education would not only ignore the Guidelines – conditions should be primarily 'macroeconomic' – but also violate international human rights instruments that require compulsory and free elementary education.

§2. Procedure and Modalities

295. Only member countries can express a request for balance of payments support to the IMF. Following the request, the Fund sends a mission to visit the country. In cooperation with the mission, the member's authorities outline a series of adjustment measures that are then described in detail in a Letter of Intent, or in a Memorandum on Economic and Financial Policies (MEFP), sometimes accompanied by a Technical Memorandum of Understanding (TMU). These documents, usually written in close consultation with the Fund's staff, contain a declaration of aims and policy by the requesting country. They are submitted to the Managing Director for circulation to the Executive Board which has the power to approve a loan. The release of financial resources is then formalized in a Stand-By Arrangement or another loan arrangement (such as an Extended Arrangement approved under the EFF).

296. The Letter of Intent and the IMF loan arrangement (more often a Stand-By Arrangement) do not entail any contract or international law obligation, not even when read together. They do not constitute an international agreement from the perspective of public international law, nor they amount to unilateral legal acts, since the 'intention of being bound' is absent. An important consequence of the absence of a contractual relationship between the IMF and the borrowing country is that, from the combined reading of the Letter of Intent and the Stand-By Arrangement, no binding agreement arises making the execution of the adjustment programme mandatory. The programme only stipulates the conditions under which currency purchases are possible; if the conditions are not fulfilled, the purchase will not go ahead. The lack of contractual character also has consequences in other areas: treaty law is not applicable, and it is not necessary to follow national procedures that might be necessary for the approval of international agreements.

297. The IMF puts forward a number of different arguments for the lack of a contractual bond. The most important legal reason lies in the formulation of Article V, section 3(b): 'A member *shall be entitled* to purchase currencies … from the Fund … *subject to the following conditions* … ' [emphasis added]. It follows that the loan arrangement is declaratory, in the sense that it recognizes the member's entitlement to use the Fund's resources; it does not create the entitlement. Stand-by arrangements and other loan arrangements do no more than specifying the conditions under which this right may be exercised.

298. Furthermore, the IMF wishes to avoid the impression that adjustment programmes are dictated by setting forth contractual obligations. To set out the results of a negotiation in the form of an agreement would amount to painting a false picture of the relationship between the Fund and its members. A contractual bond would be inconsistent with the 'national ownership' principle. The IMF supports the programme without wishing to appeal to contractual rights and obligations.

299. The adoption of a Fund decision in the form of a Stand-By Arrangement (or another loan arrangement) offers a number of advantages both for the member and the IMF:

(a) *Speed*. The procedure for setting up a letter of intent and a Stand-By Arrangement can be quickly dealt with; the procedure is simple, and because the member is under no obligation, there is less necessity to formulate the text of the letter of intent in minute legal detail; speed is of the essence when balance of payments problems are threatening.
(b) *Confidentiality*. The procedure can be handled in complete confidentiality, since there is no question of an agreement that must be put before a legislative assembly, or which must be published; confidentiality is particularly important when currency devaluation forms a part of the adjustment programme. If the adjustment programme were a matter of public knowledge, the risk would ensue of a flight of capital or speculation against the currency undergoing devaluation. An objection to confidentiality is that radical adjustment measures are adopted without the democratic scrutiny of a parliament or other stakeholders.
(c) *Primacy of economic sovereignty*. The member may, at any given moment, call a halt to the adjustment programme without being guilty of breach of contract, and without sanctions from the IMF. If the member decides to do so, there is no question of non-compliance with the letter of intent or the Stand-By Arrangement. The only consequence will be the suspension of the balance of payments support. The resources already purchased are not possessed unlawfully and do not have to be yielded up prematurely by repurchase. It would only be a question of unlawful behaviour (a 'non-complying purchase') if the use of the resources conflicted with the purposes of the Fund. However, invoking economic sovereignty does have practical consequences, since continuation of the programme remains a condition for continuing the balance of payments support, not only by the Fund but also by other creditors. If balance of payments support is indispensable, a country has in practice no option but to see the adjustment programme through. Should a member nevertheless decide to bring a premature end to the adjustment programme, the relation of trust will be seriously compromised. If a new request for support is made, the IMF will insist on clarification about the reasons for halting the programme and will require more security before proceeding to a new Stand-By Arrangement.

§3. Monitoring and Measuring Performance

300. Once an arrangement is approved by the Executive Board, resources (in the form of purchases of international reserve currencies) are usually made available to the requesting country in phased instalments. Disbursements made in instalments are linked to demonstrable policy actions. Quantitative performance criteria (QPCs), indicative targets and structural benchmarks are established to assess the member's compliance with the programme and progress in its implementation.

301. The 2002 Guidelines on Conditionality defines QPCs as a set of variables or measures 'whose observance or implementation is established as a *formal condition* for the making of purchases or disbursement under a Fund arrangement' [emphasis added]. They are specific and measurable conditions related to macroeconomic variables, or to those variables by which special clauses of the Articles, or derived policies, are effectuated. QPCs must 'normally' be related to the Fund's core areas of responsibility, i.e., 'macroeconomic stabilization; monetary, fiscal, and exchange rate policies, including the underlying institutional arrangements and closely related structural measures; and financial system issues related to the functioning of both domestic and international financial markets'.

302. This restriction to largely macroeconomic criteria means that the IMF relies primarily on aggregate figures when reviewing and evaluating the implementation of the programme. For example, in the case of figures relating to the maximum deficit in the public expenditure budget, the actual way in which public expenditure is reduced cannot be set out in the form of a criterion. Strict application of the Guidelines means that criteria may not refer to matters of redistribution, nor can they specifically state that deficits must be reduced through cuts in expenditure on defence, education or food subsidies.

303. Differences of interpretation about whether the criteria have been adequately met should, ideally, not occur: a member country should always be in the position to know at any given moment whether it has met the criteria and thus whether it may purchase currency from the Fund (on the purchase-repurchase mechanism *see supra*, paragraph 247).

304. Accordingly, QPCs should relate to macroeconomic variables under the control of the country's authorities such as monetary and credit aggregates, international reserves, fiscal balances and external borrowing. Furthermore, a number of principles must be respected when QPCs are being established. They must be as few as possible in number as well as explicit, objective and objectively verifiable. They may only be included in lending arrangements and subsequent programme reviews: criteria in 'secret side letters' are not permitted.

305. QPCs constitute the core of conditionality.If a QPC is not met, the Executive Board may, however, approve a formal *waiver*, but only if it is satisfied that 'the programme will nevertheless be successfully implemented – i.e., that it will achieve its goals – either because of the minor or temporary nature of the non-observance or because of corrective actions taken by the authorities' (2014 Operational Guidance to IMF Staff).

306. In addition to QPCs, indicative targets and structural benchmarks may also be established. Indicative targets are indicators used to assess the country's progress in meeting the objectives of the programme when there is substantial uncertainty about economic trends. Structural conditions refer to other non-quantifiable variables (notably 'microeconomic') and can be established only when essential to achieve programme goals. The rationale of this restraint in the use of structural benchmarks is due to the fact that IMF's objectives should normally be adequately achieved through influence on macroeconomic variables. Therefore, structural benchmarks (that imply a manipulation of one or more microeconomic variables) should be resorted to only if deemed to have a critical impact at macroeconomic level. They are usually related to tax policy and revenue administration, public financial management and public sector reforms. Indicative targets and structural benchmarks are assessed in the context of the overall programme performance and do not require a waiver if they are not met.

307. Before new releases are made, the Fund checks if the programme is on track. Through periodical programme reviews, the Executive Board assesses if conditions are being met according to the agreed timetable and establishes if the programme needs to be modified in light of new developments. Disbursements under an IMF-supported programme can take place only upon the programme review approval, or completion of reviews, by the IMF Executive Board.

308. A member may also be expected to take 'prior actions' and to implement some measures before the IMF's Executive Board approves financing, completes a review or grants a waiver when upfront implementation is critical to achieve programme goals. Prior actions ensure that the programme has the necessary foundation for its successful implementation, or that it is put back on track. Preconditions should be as limited as possible and may only be required when necessary for carrying out the programme in accordance with the IMF's policies. Following the global financial crisis, the Fund developed a new framework to include a more systematic use of ex ante conditionality.

309. The Monitoring of Fund Arrangements (MONA) contains a comprehensive database on the economic objectives and outcomes of loan arrangements, providing a history of Fund-supported programmes from their Executive Board approval to completion. Data are available for most arrangements since 2002.

§4. Conditions on Governance

310. In 1997, the IMF adopted a policy on how to address economic governance issues. The Guidance Note 'The Role of the IMF in Governance Issues' is still relevant today and recognizes the Fund's role in promoting good governance and fighting corruption in its surveillance, lending and technical assistance activities.

311. The concept of 'governance' is generally understood to describe a framework which includes the various institutions, mechanisms and practices through which a country exercises governmental authority, discharge its responsibilities and manages its public resources. While 'governance' is a neutral term, 'good governance' is a more qualitative concept defined as the most important factor in eradicating poverty and promoting development. It is stipulated that poor governance creates opportunities for corruption and undermines social and economic development as well as confidence in the government and markets integrity.

312. The Guidance Note stipulates that the Fund's involvement is limited to economic aspects of governance and that the IMF staff may address issues of poor governance whenever these had 'significant current or potential impact on macroeconomic performance in the short and medium-term, and on the ability of the government credibility to pursue policies aimed at external viability'. The Guidance Note identifies by way of example indicators of poor governance that may alert IMF missions: for example a poorly remunerated civil service and inconsistencies or improbabilities in the various data and accounts in member countries.

313. The accumulation of instances that may trigger the Fund's involvement leads to believe that any major governance issue can be considered by the Fund. Many key decisions on tax or expenditure would have a significant macroeconomic impact. Many items of governments' policies would be brought within the scope of the Fund's jurisdiction. The 1997 Guidance Note further clarifies, however, that: 'IMF judgment should not be influenced by the nature of a political regime of a country, nor should it interfere in domestic or foreign politics of any member.'

314. The Guidelines identify a number of governance problems. First, corruption should be addressed. As no precise definition of corruption is being provided, the IMF staff is expected to draw upon comparisons with broadly agreed best international practices of more or less corruption-free economic management. For that purpose, the 1997 Guidance Note appears to anticipate coordination with other multilateral institutions. In this area, the work done by the OECD and the UN is relevant. The OECD 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions criminalizes 'active bribery' of foreign public officials. The OECD Convention addresses primarily the offence committed by the person who promises or gives a bribe. Besides, in 2003, the General Assembly of the UN adopted the Convention against Corruption which also focuses on the passive side of corruption. The Convention stipulates that parties have to adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; and (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

315. Apart from widespread forms of corruption, the Fund may even address 'individual instances of corruption in cases where there is a reason to believe they would have significant macroeconomic implications, even if these effects are not precisely measurable'. Here, the Fund seems to address episodes of corruption which may grow rampant in higher government circles. While the IMF should primarily rely on information provided by the authorities, higher government officials themselves are not immune from IMF scrutiny. If other information is available from third parties including 'rumours which have some genuine credence', the Fund may insist on an independent audit. Not without reason, the Guidance Note stresses that the staff of the Fund should be prepared to face tensions in the working relationship with government officials who are suspected of being involved in corruption.

316. Second, the Guidance Note requires alertness of the IMF staff to promote good governance in general, i.e., without particular references to corruption practices. In this respect various examples are mentioned: a reduced scope for generalized rent-seeking, enhanced transparency in decision-making and budgetary processes, reductions in tax exemptions and subsidies, improved accounting and control systems, improvements in statistical dissemination practices, a more balanced composition of public expenditure and civil service reform.

317. The ambition of the IMF to assess many key administrative functions of governance before approving balance of payments support requires expertise in many areas. The Guidance Note stipulates that conditionality may even refer to policies that are outside the expertise of the IMF. Accordingly, when deciding on financial support, the Fund may apply principles and rules which go beyond its corpus juris, i.e., the Articles of Agreement and subordinate rules and regulations. Therefore, the IMF staff is expected: 'to keep abreast of changes in the policies of partner organizations and specific efforts in member countries on governance issues. This should include the activities of partner organizations, particularly the World Bank, in addressing governance issues in areas which are outside IMF's competence but nonetheless important for the achievement of the economic policies advocated by the IMF'.

318. Rules on governance, applicable in the World Bank, WTO, UN and any other 'partner organizations' are therefore monitored also by the IMF. Such rules may include procurement procedures, public enterprise reforms and those promoting good governance in general. The Fund could rely on various regulations, for example WTO's Agreement on Government Procurement, World Bank's Operational Directives and UN Development Programme's (UNDP) policy statements on democratic governance.

319. Following a request from the IMFC, a review of the IMF engagement on governance issues was carried out in 2017. It was assessed that the Fund had undertaken various initiatives on promoting good governance and reducing corruption and that considerable progress has been made. However, in circumstances where corruption is systemic, the IMF failure to address these issues was also considered capable of giving rise to reputational risks and undermining the safeguarding of IMF resources. The review suggested therefore to strengthen the Fund's engagement by adopting a wider perspective on corruption, establishing a better method of assessing the extent of corruption and its macroeconomic impact and continuing cooperation with other international organizations. To this end, a proposal for the adoption of a new framework to supplement the 1997 Fund's Guidance Note was put forward.

Part IV. The IMF in Global Context

Introduction

320. The IMF cannot be studied in isolation from the global context. Under Article X, the IMF 'shall cooperate', within the terms of the IMF Articles, 'with any general international organization and with public international organizations having specialized responsibilities in related fields'. The duty to cooperate is intended to lead to an interaction between the IMF and other international organizations that will influence the IMF and have direct or indirect repercussions on its decision-making process. Conversely, the IMF's own objectives should also have an influence on other institutions.

321. Besides, Article 56 of the United Nations Charter commits all UN members to cooperate in the economic and social fields. Being a UN specialized agency, the IMF may be regarded as a platform for the kind of cooperation that Article 56 urges.

322. How 'related fields' should be understood depends on a large extent on how the IMF interprets its own purposes. If the IMF interprets them either more broadly or differently, new 'related fields' are opened up, and cooperation should ensue. Certainly, in fields where the IMF operates but lacks the necessary knowledge and experience, cooperation should be actively sought. To the extent the IMF considers measures to promote lasting economic growth as an essential facet of adjustment programmes, there is a need to seek modes for cooperation with other organizations.

323. Cooperation is also feasible in other areas. The more the IMF becomes concerned with related aspects of adjustment – trade liberalization, the fighting of corruption, the protection of human rights standards as well as environmental issues – the more it is reasonable to expect that the IMF will seek the expertise of organizations holding a specific mandate in the related areas.

324. Cooperation may take place informally by representatives of the Fund attending meetings of other organizations and staff members participating in workgroups and seminars. The IMF Managing Director speaks annually to the UN Economic and Social Council (ECOSOC), and the IMF is represented at other meetings and cooperation bodies set up by the UN. The Managing Director also participates in informal consultative bodies and the G-7/8 and G-20. Representatives of other organizations, in turn, attend the IMF annual meetings as well as meetings of the IMFC.

325. Cooperation is formalized through an agreement only with a few organizations (the UN, World Bank and WTO). For other organizations such as the UN Conference on Trade and Development (UNCTAD), the OECD, the BIS and the EU, cooperation took on a permanent character when the IMF opened its European Offices for contacts. The Fund also cooperates with regional development banks particularly in connection with the HIPC and MDRI initiatives. An example of effective cooperation is the publication of joint BIS-IMF-OECD-World Bank statistics on external debt.

Chapter 1. The IMF, Intergovernmental Groups and the FSB

§1. G-7/8, G-20, G-10 and G-24

326. Since the 1970s, there has been a high degree of informal consultation among countries on major political and economic issues in the context of intergovernmental fora. Gs have no institutional structure and change their composition by mutual agreement. Given that they are devoid of any kind of conferred powers and permanent administrative structure, they are not international organizations. The government which periodically hosts the group usually provides administrative and secretarial support. They contribute to international coordination on various economic issues.

327. The G-7 consists of Canada, France, Germany, Italy, Japan, the UK and the US, with some additional observers. Russia joined the group as full participant since 1998, thus marking the birth of the G-8. In 2014, however, in response to actions taken by Russia in Ukraine, the G-7 leaders announced they would not meet with Russia in future summits. The G-7/8 Summit meets at the level of Head of State or Government and issues Final Communiqués which are not legally binding but represent the leaders' political commitment.

328. Since 1998, in consideration of its expanding working agenda, the organization of ministerial meetings, independent from the Summit of the Heads of State or Government, has become common practice. The country holding the Presidency decides upon the number and agenda of ministerial meetings. Traditionally, along with the annual Summit of the Heads of States and Government, the meetings of the Foreign Ministers and of the Finance Ministers and Central Bank Governors are also convened. The conclusions reached at ministerial meetings are usually reflected in the Summit Final Communiqué. Well-known meetings of the G-7 Finance Ministers and Central Bank Governors resulted in the Plaza Accord (1985) and the Louvre Accord (1987), which addressed the problems of fluctuating exchange rates of major currencies.

329. The G-7/8 usually convenes immediately prior to the semi-annual IMF meetings. The agenda of G-7/8 meetings of finance ministers may cover subject matters which are in the mandate of the IMF. In this case, consensus reached at the ministerial meetings might supersede consultations within the Fund. G-7 countries detain, in fact, 41.29% of the voting power in the IMF.

330. The G-7/8 has lost much of its prominence since the emergence of the G-20, a group that was established in 1999 in the wake of the Asian financial crisis with the aim of stabilizing financial markets. The G-20 brings together major advanced and emerging economies (Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, the Republic of Korea, Turkey, the UK, the US) and the EU (represented by the President of the European Council and the President of the European Commission). Spain is a permanent invited guest. The IMF Managing Director (together with the Chair of the IMFC), the President of the World Bank and the FSB are also invited to attend. Countries which chair key regional groups – such as the African Union, the Association for Southeast Asian Nations, the New Partnership for Africa's Development and the Caribbean Community – are generally invited to the summit.

331. The G-20 Finance Ministers and Central Bank Governors meet annually and discuss measures to promote global financial stability. Since 2008, the G-20 also meets in a Heads of State or Government format and, at the Pittsburg Summit of 2009, the leaders designated the G-20 as their 'premier forum' for international economic cooperation. During the global financial crisis, the G-20 started to play a greater role in promoting economic cooperation and reforming the international monetary and financial system. Currently, the G-20 represents around the 77% of the voting power in the IMF, and when it reaches a consensus, there are high expectations that the IMF will act accordingly.

332. The G-10, which comprises the states of the G-7 plus the Netherlands, Belgium, Sweden and Switzerland (who joined the group at a later stage), was created in 1962. Its primary purpose is to provide additional resources to the Fund through the GAB (*see supra*, paragraph 87). The G-10 provided some smaller industrialized countries the opportunity to join the debate on global monetary policies.

333. The G-24 consists of countries from Africa, Asia and Latin America and was created in 1972 as a chapter of the G-77 for the purpose of coordinating the positions of developing countries and emerging markets on international monetary and development finance issues. The IMF provides secretarial services. The group convenes and issues communiqués immediately prior to the semi-annual IMF meetings. The G-24 has been instrumental in the IMF policymaking by issuing studies and reports.

§2. The Financial Stability Board

334. In February 1999, the G-7 established the Financial Stability Forum (FSF), entrusting it with the task of promoting global financial stability through the exchange of information and international cooperation in financial supervision and surveillance. In 2009, the G-20 established the FSB as the successor of the FSF. In order to address participatory gaps and legitimacy issues, membership in the FSB was broadened to include all the G-20 countries as well as Hong Kong SAR, Singapore and Spain. The FSB membership includes international standard-setting bodies, the BIS, the OECD, the World Bank and the IMF. The FSB coordinates at international level the work of national financial authorities and international standard-setting bodies and develops and promotes the implementation of effective regulatory, supervisory and financial sector policies. It brings together national authorities responsible for financial stability in key international financial regions, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts.

335. The IMF Executive Board decision approving the Fund's membership in the FSB made it clear that participating in the FSB would not equate to becoming a member in an international organization and that, therefore, the Fund will not be legally bound by decisions adopted within the FSB but only politically accountable to the other FSB members. The IMF membership in the FSB would have no legal and policy implications for the Fund's rights and obligations; furthermore, the Fund will have the right to opt-out from decisions that may be inconsistent with its legal or policy framework.

336. The respective roles of the IMF and the FSF were clarified in 2008 in a Joint Letter, which is still relevant for the FSB today, signed by the IMF Managing Director and the FSF Chairman. While the IMF is principally responsible for the supervision of the international monetary system and of its members' domestic policies with an impact on external stability through FSAPs, ROSCs and Article IV consultations, the FSB is primarily concerned with the monitoring of the international financial system: it coordinates standard-setting bodies, identifies vulnerabilities and gaps, exercises peer pressure through its monitoring mechanisms and sponsors adherence to international financial standards.

337. The IMF and the FSB also differ in the leverage they have over their members. On the one side, the IMF monitors economic and financial policies of members through mandatory Article IV consultations (a process that for systemically important countries now includes mandatory FSAP assessments), but it has only a limited power to apply sanctions to members failing to comply. On the other side, FSB's members commit to pursue the maintenance of financial stability, maintain the openness and transparency of the financial sector, implement international financial standards (including the twelve key International Standards and Codes) and agree to undergo periodic peer reviews. The IMF and the FSB share responsibility for conducting the Early Warning Exercise, which aims at identifying the build-up of macroeconomic and financial risks, and for reporting to the IMFC and the G-20 Finance Ministers and Central Bank Governors.

Chapter 2. Relationship with the UN

338. The IMF Articles of Agreement entered into force on the 27th of December 1945, only two months after the UN Charter. Interpretation and application of the IMF Articles should proceed in the light of the UN Charter. The subordination of the IMF Articles arises from the position that the Charter takes towards obligations arising from other international agreements. According to UN Article 103, in the event of a conflict, the obligations arising from the Charter takes precedence over every other international agreement, including agreements entered into force after the Charter.

339. On 15 November 1947, the UN signed a relationship agreement with the IMF, conferring on the IMF the status of a specialized agency. The UN–IMF relationship agreement emphasizes, however, the necessity for the IMF to function 'as an independent international organization'. The independence of the IMF within the scope of its mandate is recognized because of the nature of its 'wide international responsibilities … in economic and related fields', as defined by the IMF Articles. Too close an involvement with the UN would carry with it the risk of politicization and jeopardize the Fund's primarily technical character. The relationship agreement covers, among other things, exchange of information and mutual consultation. The UN and the IMF may also make formal recommendations to each other but only after consultation.

§1. General Cooperation

340. Cooperation with the UN has been troublesome and was often characterized by differences of policies and ideologies. IMF staff members tend to view the UN as inefficient and politicized. In practice, cooperation is limited to the exchange of views and information on matters of mutual interest, exchange of statistical data and reciprocal attendance in meetings. Cooperation mainly focuses on specific activities in the context of sustainable development, macroeconomic policy dialogue, sovereign debt, and to a lesser extent, poverty eradication and the protection of the environment.

341. In 2008, the President of the UNGA mandated a Commission of experts chaired by Joseph E. Stiglitz to reflect on the causes of the global financial crisis, assess impacts on all countries and suggest adequate responses to the global economic and financial crisis. The Final Report of the Commission of Experts (the so-called Stiglitz Report) was released on 21 September 2009. The Report contends that only the UN have the necessary political legitimacy to discuss issues related to the reform of the international economic and financial architecture, as they grant adequate representation to both middle-income countries and least-developed countries. It proposed the creation of a Global Economic Coordination Council which would oversee and direct the activities of the specialized institutions (among which the IMF and the World Bank). Even if the proposal was considered not politically viable, it pointed to the weaknesses related to voice and participation of developing countries in international financial institutions.

342. More recently, the UNGA adopted Resolution 69/319 setting forth nine Basic Principles on Sovereign Debt Restructuring Processes (the sovereign's right to initiate the debt restructuring process, sovereign immunity, equitable treatment of creditors, supermajority restructuring, transparency, impartiality, legitimacy, sustainability and good faith in negotiations) and inviting all Member States and international financial institutions – the IMF in particular – to support and promote the principles. No formal position was taken by the Fund on the resolution (on the IMF and sovereign debt *see supra*, paragraph 188).

§2. The IMF and Peace and Security

343. The 1947 UN–IMF Relationship Agreement describes the relationship between the UN Security Council and the IMF. Article 6 stipulates that the Fund 'takes note' of its members' obligations to abide by the Council's resolutions and will 'in the conduct of its activities, have due regard for the decisions of the Security Council under Articles 41 and 42 of the United Nations Charter'. 'Takes note' and 'due regard' do not equal 'respect' or 'subordination'. According to the letter of this clause, the Fund may continue to provide balance of payments support to a member country that is under embargo pursuant to a UN Security Council Chapter VII resolution. The IMF's singular position must be explained in such a way that the Fund could only disregard a binding Security Council resolution on the grounds of overwhelmingly convincing arguments. However, the Fund holds that under no circumstances it can operate in conflict with its own Articles, and it would appear that the Fund does not consider itself *ipso jure* bound by Security Council resolutions.

344. It is fair to ask if the ECOSOC and the General Assembly acted ultra vires by agreeing to the clause 'have due regard for the decisions of the Security Council'. It is indeed hard to imagine that the authors of the UN Charter had given the Security Council the right to impose sanctions against a member, while at the same time permitting that member to receive financial assistance from the IMF. It may be argued that the UN had made a concession in order to bring the IMF into the fold of specialized agencies, but the argument fails to consider that the Relationship Agreement offers the IMF the opportunity to provide financial assistance against the spirit of the Charter. In practice, however, the enforcement of Security Council resolutions will not pose problems for the approval of IMF balance of payments support as the permanent members of the Security Council also have an important voice in the IMF, and it may be assumed that they will make their voice heard.

345. Besides, under the IMF Executive Board Decision No. 144-(52/51), Fund's members are allowed to introduce exchange restrictions for national or international security reasons (*see supra*, paragraph 161), especially when required by a UN Security Council resolution to impose financial sanctions against a state or targeting individuals and juridical persons in the framework of the prevention and suppression of terrorism financing. A member should notify in advance the Fund of its intention to impose restrictions for security reasons. Urgency and secrecy may, however, exempt the member from prior notification. If the Fund does not reply within thirty days from notification, the member may assume that the Fund has no objection. In its practice, the Executive Board never objected to the imposition of said restrictions.

§3. The IMF and Human Rights

346. The internationally recognized system of human rights is based on the Universal Declaration of Human Rights and the two International Covenants on Human Rights of 1966. From these sources spring a number of other multilateral treaties pertaining to human rights, such as those outlawing racial discrimination and torture. Regional human rights treaties constitute an independent set of instruments.

347. The IMF Articles do not provide a clear basis to link financial assistance and human rights. However, this should not hinder IMF organs from acknowledging that they are bound by customary and peremptory rules of international law.

348. However, in a paper on the relationship between the 1966 International Covenant on Economic, Social and Cultural Rights and the IMF Articles, the General Counsel of the IMF adopted a strict view by arguing that the IMF is primarily a monetary agency and should not be made responsible for upholding human rights (*see also supra*, paragraph 280). He noted that 'the norms contained in the Covenant have not attained the status under general international law that would make them applicable to the Fund independently of the Covenant'. He reiterated that the IMF is not a party to the Covenant and that the IMF should not exceed its mandate: if members believe that the IMF should integrate human rights in their decision-making, they should amend the IMF Articles.

349. In practice, the Fund has only recently slowly started to pay greater attention to the promotion of economic, social and cultural rights. Economic, social and cultural rights refer to obligations to promote full employment, just and favourable working conditions, social security, adequate living standards (including food and housing), health and education. The promotion of such rights means in effect the targeting of financial resources and requires an allocation of public spending to these sectors. By incorporating a socio-economic human rights dimension in its adjustment programmes, the Fund could make a direct and positive contribution. In particular, this might take the form of sparing socio-economic provisions when laying down conditions for reducing budget deficits in adjustment programmes. The position of vulnerable groups during the implementation of IMF-supported programmes has received increasing consideration based on the belief that socio-economic decline brings in its wake political unrest, which in turn compromises the chances of successful adjustment.

350. In 2016, the IEO published a report on 'The IMF and Social Protection' affirming that, while not an explicit part of its mandate, the IMF addresses social protection issues in an indirect way. Areas in which the IMF incorporated social protection considerations into its policy advice and programme conditionality have been 'social safety nets and their financing, the fiscal consequences of publicly mandated pension and health insurance schemes in countries with aging populations, and the impact of food and energy subsidy reform on vulnerable groups'. Moreover, the 2014 Revised Operational Guidance to IMF Staff on Conditionality (on which *see supra*, paragraphs 283 ff.) recognized the need to consider macro-social aspects in Fund-supported programmes. However, the IEO contended that there is still a limited use of poverty and social impact assessments and that there is room to further improve collaboration with other multilateral agencies.

351. The commitment to protect socio-economic standards during adjustment is one that can pre-eminently be realized through cooperation with the UN and its specialized agencies. It is maintained that the IMF should strengthen its cooperation with human rights bodies in particularly with a view to identify areas where public expenditure must be maintained or even increased if necessary. Simultaneously, the Fund should address non-productive spending (including military spending) so that investments in human capital, such as basic health care and primary education, are not displaced. The IMF should also protect social sector spending of member countries, in particular on health and education. The Fund has reiterated that it is willing to recognize the crucial link between the level and efficiency of health and education spending and economic growth.

352. Gross and systematic human rights violations give rise to the following considerations. The Fund can refuse or withdraw financial support to states involved in gross human rights violations only because human rights abuses hinder the performance of the adjustment programme. In this case, violations are of such a nature that their political and economic consequences make a successful performance of the programme unlikely. The situation is different where violations of human rights are not of such a nature as to undermine the member's capacity to successfully implement the adjustment programme. In this case, if the Fund refuses balance of payments support, it might in effect contribute to putting pressure on a government to improve its human rights record, but the outcome might also be a worsening of the situation. A refusal of this kind should be applied with the greatest caution and dressed up in economic language. In fact, it is highly debatable whether withholding balance of payments support will lead to an improvement in the human rights situation. On the contrary, withholding assistance might plunge the economy deeper into the mire, which is hardly likely to encourage greater respect for human rights. Besides, this kind of conditionality would only affect members who were dependent on the Fund, i.e., developing members that rely on Fund credits. The corollary is that members who are not dependent on the Fund have nothing to fear. It is worth noting that, during the 1960s, the UNGA repeatedly urged the IMF to terminate credit and other assistance to the apartheid regime of South Africa, but the Fund continued lending until 1983.

§4. The IMF and Sustainable Development

353. Sustainable development has been defined as 'development that meets the needs of the present without compromising the abilities of future generations to meet their own needs' (*see* the 1987 Brundtland Report 'Our Common Future'). This definition is frequently applied to environmental policies in the sense that future generations must not be burdened with the costs incurred by environmental degradation caused by careless policies of present generations. As recognized by the UNDP, however, sustainable development has more dimensions: (a) the prevention of financing current consumption by incurring economic debts that others must repay in the future; (b) the need to invest in the health and education of today's population so as not to create a social debt for future generations; and (c) the use of natural resources without creating ecological debts by overexploiting the carrying and productive capacity of the earth.

354. In September 2000, the leaders of 189 countries gathered at the UN to sign the Millennium Declaration whereby they committed to achieve the so-called MDGs, a set of eight measurable goals ranging from halving extreme poverty and hunger to promoting gender equality and reducing child mortality, by the target date of 2015.

355. In September 2015, the UN adopted the Sustainable Development Goals (SDGs) as a new set of seventeen global development targets to succeed the MDGs for the period 2015–2030. SDGs are broader in scope and reflect the view that development needs to be economically, socially and environmentally sustainable. They focus on five pillars: people, planet, peace, prosperity and partnership. To mobilize financial resources needed to achieve these targets, the Third UN Conference on Financing for Development adopted the Addis Ababa Action Agenda on a sustainable financing strategy.

356. Within its mandate, the IMF contributes to sustainable development mainly through: its expanded financial support to low-income developing countries; its engagement with countries in fragile and conflict-affected situations (FCSs), contributing to help them to restore macroeconomic stability, build core macroeconomic policy institutions and catalyse donor support (*see supra*, paragraphs 258 ff.); technical assistance, in particular on tax policy and administration in order to help developing countries to boost domestic revenues mobilization; and policy advice and capacity development activities, especially when aimed at assisting countries to improve efficiency of public spending in infrastructure investment and addressing gaps in income and gender equality as well as in environmental sustainability.

Chapter 3. Cooperation with the World Bank

357. As far as the relationship between the IMF and the World Bank is concerned, several aspects come into play. First, membership in the IBRD and IDA is only open to members of the Fund. Accordingly, states must first subject themselves to the IMF's Articles of Agreement in order to be able to enjoy the benefits of the World Bank's membership. It should be noticed, however, that this clause was devised within a framework of a system of stable exchange rates; in the authors' intention, only countries willing to accept the par value system would be considered for membership of the Bank. Although the Fund's grip on exchange rate stability has loosened considerably since the 1978 Second Amendment, membership of the IMF nevertheless remains a condition for membership of the Bank.

358. Second, Article V, section 8 of the IBRD Articles of Agreement contains a cooperation clause which implicitly points to the IMF as a cooperating partner: '(a) the Bank, within the terms of the Agreement, shall cooperate with any general international organization and with public international organizations having specialized responsibilities in related fields' … '(b) in making decisions on applications for loans or guarantees relating to matters directly within the competence of any other IO and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization'. The first sentence under (a) uses similar wording to the IMF's duty to cooperate provision. Conversely, clause (b) has no equivalent in the IMF Articles.

359. It is evident that 'international organization' refers particularly to the IMF. The Bank has to be kept informed about the IMF's opinions and recommendations and has to take them into consideration whenever the Bank encroaches on the jurisdiction of its sister organization. The founders of the two organizations obviously recognized that the Bank could operate on the IMF's territory. Conversely, there was no anticipation that the IMF might interfere in matters which primarily concern the Bank, at least to judge from the IMF Articles.

360. The Bretton Woods Institutions have concluded agreements to clarify the reach of their jurisdictions. Not surprisingly, conflicts can easily arise when the two organizations are involved simultaneously in a single country. Despite the endeavours to coordinate activities, the risk remains that irreconcilable advice may be given or conflicting conditions laid down. For this reason, the Bretton Woods organizations adopted a memorandum for mutual cooperation.

§1. DIVISION OF COMPETENCES

361. In 1966, the IMF Managing Director and the President of the World Bank jointly issued the 'Fund–Bank Collaboration Memorandum' outlining the procedures for collaboration between the two sister organizations. In 1989, after reviewing the Memorandum on a number of occasions, the 'IMF–World Bank Concordat' was adopted to strengthen cooperation and avoid inconsistencies in the advice given to member countries.

362. The key element of these documents is the identification of the main responsibilities of the IMF and the World Bank. The Bank has 'primary responsibility for the composition and appropriateness of development programmes and project evaluation, including development priorities'. The Bank should focus on the efficient allocation of resources in both public and private sectors; priorities in government expenditures, reforms of administrative systems, production, trade and financial sectors; and the restructuring of state enterprises and sector policies. The Fund has 'primary responsibility for exchange rates and restrictive systems, for adjustment of temporary balance of payments disequilibria, and for evaluating and assisting members to work out stabilization programmes as a sound basis for economic advance'. This responsibility includes aggregate aspects of macroeconomic policies and their related instruments including public sector spending and revenues, aggregate wage and price policies, money and credit, interest rates and the exchange rates.

363. The Memorandum and the Concordat confirm that the overlap in the activities of the two institutions grew rapidly in the 1980s with the introduction of structural adjustment programmes and in the context of the Latin American debt crisis. The existence of overlaps may mean that one of the organizations has to give way to the opinions of the other, whose responsibility is in question. Primary responsibility, however, does not equal exclusive responsibility. Certainly, when the IMF acts alone (i.e., when the Bank is not involved), no 'differing policy advice' can arise, and the Fund may incorporate advice or conditions on the Bank's territory, with the proviso, of course, that the Fund remains within its mandate. In contrast, the Bank must always take into account the Fund's opinions. When drawing up programmes for specific sectors in the economy, the Bank must take into account IMF advice, insofar as this concerns the primary responsibility of the Fund.

364. In 2007, IMF–World Bank collaboration was streamlined through the Joint Management Action Plan (JMAP), which provides a framework to improve coordination and communication between the staff of the two institutions on country issues. IMF and World Bank country teams should meet at least once a year to discuss their country-level work programme, identifying the key macroeconomic challenges that the country is facing and necessary macro-critical sectoral reforms. The JMAP also calls for greater collaboration on cross-cutting issues and information sharing. The new framework for collaboration was effectively applied in the wake of the global financial crisis by many country teams.

365. Today there are many initiatives on which the Fund and the World Bank collaborate. Both provide financial support to LICs with protracted balance of payments problems and limited access to private financial flows. Under the HIPC and the MDRI initiatives, the IMF and the Bank assisted the poorest countries in reducing their external debt and achieve debt sustainability. Furthermore, under the joint Debt Sustainability Framework (DSF) for Low-Income Countries, the IMF and the World Bank guide countries and donors in mobilizing financing for LICs and reducing an excessive building-up of debt. The DSF enables the Bretton Woods organizations to integrate debt issues in their policy advice. To this end, Debt Sustainability Analyses (DSAs) are regularly conducted to assess a country's projected debt burden, its vulnerability to external and policy shocks and risk of debt distress (*see also supra*, paragraph 186). Countries with weaker policies and institutions tend to have lower debt-carrying capacity and face repayment problems at lower levels of debt. The latest review of the DSF was approved in 2018 to ensure that the framework remains appropriate in view of the rapidly changing financing landscape facing LICs. The reformed framework aims at providing countries with early warnings of potential debt distress without unnecessarily constraining their borrowing for development.

366. The FSAP – aimed at appraising the stability of the financial sector in a given country – is another joint responsibility of the IMF and the Bank. The importance of FSAP assessments has been highlighted by the global financial crisis (*see supra*, paragraphs 144 ff.).

§2. Cross-Conditionality

367. What is termed cross-conditionality arises when one of the two organizations provides or extends a loan dependent on the fulfilment of conditions which the other has laid down. Cross-conditionality is the dread of debtor nations, due to the domino effect: if the Fund first stops credit because of failure to fulfil performance criteria, and the Bank in response suspends credit, also international financial markets may lose faith in the member country concerned. Other creditors – regional development banks, commercial banks and bilateral donors – will respond likewise. The outcome – a total block on international credit – may thus ensue from a failure to meet a simple performance criterion such as getting inflation down below a certain level.

368. The official view of the IMF is that cross-conditionality should be avoided and that closer collaboration between the two institutions should not be allowed to lead to cross-conditionality. In practice, however, it seems that cross-conditionality cannot be avoided by merely harmonizing Fund and Bank programmes: the Bank provides support based on policy and strategies 'agreed' with the Fund; the Fund provides credit after ascertaining that investment priorities and other factors 'agreed' with the Bank concerning the efficient allocation of government resources are satisfactory. Moreover, because officially cross-conditionality is not permitted, the Bank incorporates relevant conditions stipulated by the Fund in its own loan agreements and the Fund ensures fulfilment of the Bank's conditions within the framework of its programme reviews. Officially, then, it is not a question of cross-conditionality, but rather of joint conditionality, i.e., the transfer of conditions from one organization to the other.

Chapter 4. Relationship with the WTO

§1. Exchange Policies and Trade Liberalization

369. The multilateral system envisaged at Bretton Woods presupposed the return to full current account convertibility and emphasized the importance of the freedom of payments and transfers to restore international commercial relations. After years of war and economic depression, keeping the existing exchange measures in place would have hampered the reconstruction process and slowed the growth of world trade. The Bretton Woods founding fathers established that the IMF would have jurisdiction over exchange restrictions, while the ITO – and afterwards the GATT and WTO – would cover measures limiting trade, both types of measures being in principle prohibited (on the ITO, *see supra*, paragraph 16).

370. Acknowledging that exchange restrictions have a highly detrimental effect on international trade, GATT Article XV makes IMF and WTO provisions complementary, setting the respective competences. Two paragraphs are particularly relevant. First, Article XV, paragraph 2 of the GATT provides that in all cases in which WTO members are called upon to consider or deal with problems concerning monetary reserves, balances of payments or foreign exchange arrangements, they 'shall consult fully with the IMF'. In such consultations they: 'shall accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments, and shall accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the IMF Articles'. Second, GATT Article XV, paragraph 9(a) establishes that 'nothing in this Agreement shall preclude: (a) the use by a Contracting Party of exchange controls or exchange restrictions in accordance with the IMF Articles of Agreement … '.

371. The first provision focuses on the common ground on which both institutions operate: balance of payments, exchange rates and monetary reserves. Essentially Article XV, paragraph 2 stipulates that when it comes to considering monetary issues, the WTO must give heed to the opinion of the IMF. The wording on the object of IMF–WTO cooperation is somewhat confusing. Paragraph 2 of Article XV GATT refers to 'exchange matters', whereas the 1996 Cooperation Agreement refers to 'exchange measures'. The IMF Articles of Agreement use the phrase 'exchange policies'. The second provision makes clear that any exchange measure that is permitted under the IMF Articles would be considered legitimate also under the GATT. Reference is implicitly made to exchange restrictions adopted for balance of payments reasons, for security reasons or under the transitional period: these measures would not amount to a breach of the GATT Agreement when introduced or maintained in accordance with the IMF Articles.

372. In 1995, the WTO was established with an enlarged mandate covering also trade in services and a greater focus on the liberalization of capital movements. During the negotiations, the issue was raised of possible overlaps of jurisdiction between the General Agreement on Trade in Services (GATS) and the IMF. As a result, the Declaration on the Relationship of the WTO with the IMF in the Uruguay Round Final Act recognized the IMF's jurisdiction over exchange matters. Moreover, a provision similar to GATT Article XV was inserted in the GATS. Pursuant to GATS Article XI, paragraph 2: 'nothing shall affect the rights and obligations of the IMF members under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under [GATS] Article XII or at the request of the Fund'.

§2. Trade Restrictions for Balance of Payments Reasons and Monetary Measures

373. The IMF comes into focus also when members of the WTO are allowed to introduce balance of payments restrictions. The WTO recognizes that, under certain circumstances, imports can impose a severe strain on the balance of payments. When a balance of payments deficit cannot be financed, a country may decide to switch to restrictive import measures in order to contain the deficit.

374. According to GATT Article XII, paragraph 2, any contracting party may impose restrictions on the quantity or value of merchandizes permitted to be imported in order to safeguard its external financial position and its balance of payments. The restrictions instituted, maintained or intensified by a contracting party 'shall not exceed those necessary: (i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves; or (ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves'. This provision does not encompass the introduction of exchange restrictions for balance of payments reasons, such possibility being already regulated by the IMF Articles. Judgments about the necessity of trade restrictions fall within the mandate of WTO, which operates less strict conditions for developing countries. A WTO member that is applying a new restriction or raising the general level of its existing restrictions by a substantial intensification of the measures must consult the Committee on Balance of Payments Restrictions. The Committee shall open an investigation and report to the General Council on the legitimacy of the restriction.

375. The IMF plays a central role in this procedure. The WTO asks the Fund for information about the adjustment strategy and the country's monetary position. In particular, the IMF makes a judgment about the underlying causes of the balance of payments problems so that the WTO can judge if the restrictions are legitimate. The WTO is obliged to respect the Fund's views.

376. Generally, the IMF is opposed to the introduction or strengthening of quantitative trade restrictions. To enter a Fund adjustment programme, a member country may be required to describe the general policies it plans to pursue, including its intention to avoid introducing or intensifying exchange and trade restrictions. In this sense, the WTO obligations might be incorporated ipso facto into IMF's conditionality.

377. The GATS sets forth a balance of payments clause that allows members not only to impose temporary trade restrictions on service sectors for which they have undertaken specific commitments but also to introduce exchange restrictions and capital controls on services-related payments. Pursuant to GATS Article XII, paragraph 1, in the event of serious balance of payments and external financial difficulties or threat thereof, a member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.

378. Article XII, paragraph 5(e) of the GATS establishes the procedure for consultations with the Committee on Balance of Payments Restrictions, which has to accept the IMF's assessment of the member's situation in terms of foreign exchange, monetary reserves and balance of payments.

§3. IMF-WTO Institutional Cooperation

379. The creation of the WTO also prompted the two organizations to strengthen institutional cooperation. Explicit arrangements for cooperation were defined in the 1996 'Cooperation Agreement between the IMF and the WTO'. The agreement includes arrangements for the staff of each institution to attend the meetings of the other's governing bodies and establishes procedures on document and information exchange.

380. Importantly, the IMF participates in the WTO Working Group on Trade, Debt and Finance which is mandated to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability. The Group addresses *inter alia* problems arising from low credit ratings, debt overhang and limited access to international financial markets.

§4. The IMF and Trade Liberalization

381. While the IMF is primarily concerned with monetary issues, it has also urged its members to promote trade liberalization. The Fund is, in fact, also mandated by the Articles to facilitate the expansion and balanced growth of international trade. Over the years, trade liberalization has been a key element of Fund-supported programmes with the number of structural conditions related to trade remaining relatively stable. Their incidence was particularly relevant in programmes for transition economies. Trade policy conditions have covered both tariff and non-tariff barriers.

382. In 2004, the Trade Integration Mechanism (TIM) was introduced to assist IMF members with temporary balance of payments deficits resulting from multilateral trade liberalization (i.e., from measures implemented by other countries). This policy aims at increasing predictability of Fund resources available under existing lending facilities to address difficulties arising from trade-related adjustments. The mechanism creates more favourable access to existing lending facilities when a country faces more competitive conditions in its export markets due to trade liberalization measures adopted by other countries. The Fund encourages the adoption of non-discriminatory trade reforms and provides support for trade liberalization through technical assistance and other initiatives.

Chapter 5. Relationship with the EU

383. Since the introduction of the single currency in 1999, Euro area countries have transferred key powers on monetary policy to the EU level. This has caused a dichotomy in the Fund's position towards EU members that are also part of the Euro area and those which have not adopted the Euro yet.

§1. SURVEILLANCE

384. As far as surveillance is concerned, the IMF conducts bilateral Article IV consultations with individual EU member countries as well as with the Euro area as a whole. Developments in the EU and the Euro area are also analysed in the WEO, in the GFSR, in the Fiscal Monitor and in the Spillover Report; these reports are part of the multilateral surveillance exercise. Before the start of the global financial crisis, there was no FSAP for the EU as a whole; the first FSAPs exercises for the EU and the Euro area were respectively completed in March 2013 and July 2018.

385. Modalities for conducting IMF surveillance over the Euro area were adopted with the introduction of the Euro. Every six months, the IMF staff exchange views with the ECB, the European Commission and other European institutions and bodies. Surveillance over the Euro area does not involve EU and national authorities simultaneously. The resulting IMF Euro Area Policies Report complements Article IV reports covering national policies of individual Euro area members.

386. The attitude of the IMF towards the European currency union is reflected in the 2012 Integrated Surveillance Decision (on which *see supra*, paragraphs 128 ff.): 'members of currency unions remain subject to all of their obligations under Article IV, section 1 and, accordingly, each member is accountable for those policies that are conducted by union-level institutions on its behalf'. This clause means that Euro area members are held accountable for monetary policies such as decisions on interest rates and liquidity management, even if these policies are determined outside their jurisdiction. However, the decision also holds a caveat: 'Because, in a currency union, exchange rate policies are implemented at the level of the union, the principles for the guidance of members' exchange rate policies and the associated indicators set out [in the paragraphs of this Decision concerning exchange rates management policies] only apply at the level of the currency union'.

387. A general problem is the overlap of oversight powers by both the IMF and the EU. In the aftermath of the financial crisis, the EU has adopted a set of regulations that aim to strengthen the surveillance of budgetary position and the surveillance and coordination of economic policies. Moreover, EU surveillance now follows a clear calendar under the so-called EU Semester. Accordingly, both institutions independently and simultaneously aim to oversee and supervise Euro area members' economic policies. As there is no formal agreement on coordination or proper delineation of responsibilities, conflicts may easily arise. To date, however, the reinforced EU surveillance framework has not led to changes in the scope and modalities of the IMF surveillance. The increasing complexity of the EU framework will likely interfere with the Fund's determination to continue Article IV bilateral consultations with Euro area members.

388. The different nature of IMF and EU surveillance can lead to tensions. IMF surveillance is based on cooperation between the Fund's staff and national authorities, and its leverage arises from the perceived impact of the Fund's assessment on capital markets and peer pressure. EU surveillance is a continuous process conducted on the basis of a precise calendar; the Stability and Growth Pact and the Macroeconomic Imbalances Procedure establish procedures to be followed and sanctions in case of non-compliance with EU rules. Furthermore, the so-called Fiscal Compact (the Treaty on Stability, Coordination and Governance signed by all EU members except the Czech Republic and the UK) establishes on participating EU Member States additional international law obligations among which the obligation to introduce a balanced-budget rule in their national legal order; it also introduces an automatic correction mechanism and makes the eventual application of sanctions easier. Therefore, in the case of differing policy advices by the two organizations, a European country would be forced to follow indications by the EU to avoid sanctions.

§2. Co-financing

389. The European sovereign debt crisis brought forward the issue of providing financial assistance to an IMF advanced economy for the first time in decades. At that time, under the EU legal framework, only countries outside the Euro area were entitled under the Treaty to receive balance of payments assistance from the Union, while a similar mechanism for Euro area member countries was lacking. Moreover, the Treaty on the Functioning of the EU (TFEU) prohibited any form of monetary financing or privileged access to financial institutions, and the no bailout clause of Article 125 TFEU made it illegal for EU institutions and member countries to assume the debts of another. While the EU was developing a new legal framework to provide financial assistance to Euro area member countries, procedures for a deeper collaboration between the IMF and the EU were established.

390. Cooperation between the IMF and the EU developed at first to provide assistance to non-Euro countries: Hungary (2008), Latvia (2008) and Romania (2009). The applicable EU balance of payments facility did not foresee the involvement of the IMF. However, on the occasion, the EU adopted internal guidelines delineating the operating procedures for EU–IMF coordination. The guidelines aimed at ensuring early consultation and ongoing information exchange with the IMF as well as consistent policy advice, synchronization of disbursements and programme reviews. The institutional arrangement that emerged saw the formation of the so-called Troika (more recently 'the Institutions'), which consists of the IMF, the ECB and the European Commission. Each participant in the Troika was bound by the decision of the group, and internal disagreements were not to be raised in public.

391. At a later stage, when the crisis hit Euro area member countries, EU–IMF co-financing was explicitly foreseen in the new mechanisms: the European Financial Stabilization Mechanism (EFSM), the European Financial Stability Facility framework agreement (EFSF) and the Treaty establishing the European Stability Mechanism (ESM).

392. Article 13(3) of the ESM Treaty attributes the task of negotiating the Memorandum of Understanding (MoU) detailing the conditions attached to financial support given to a Euro area member country to the European Commission, in liaison with the ECB, and 'wherever possible' with the IMF. The same wording is used at paragraph 7, concerning the monitoring phase. No further specification on the scope and modalities of the cooperation between the EU and the IMF can be found in these provisions, which thus do not contribute to a substantial clarification of the legal framework. It is worth underlining, though, that the ESM Treaty is not binding upon the IMF, which did not take part in its drafting. In fact, the IMF Executive Board took no explicit decisions on its participation in the Troika or on the modalities for its operations.

393. The Troika arrangement raised many concerns. Some expressed the view that the Troika arrangement would have a negative impact on the independence of the IMF and the principle of uniform treatment of its member countries. European Executive Directors, though, considered the arrangement positively, especially because at that time the ECB and the European Commission lacked experience in designing crisis-response programmes. Commentators also highlighted the 'dual role' played by the ECB and its conflict of interest: the ECB played, in fact, a significant part in drafting programmes while it was, at the same time, conferred the power of monitoring the implementation of conditionality. In addition, the Troika arrangement gave rise to a large information asymmetry within the IMF Executive Board in favour of Euro area Directors, who collectively have more than one-third of the IMF's voting power.

394. Four Euro area members received financial assistance from both the IMF and the EU: Greece (2010), Ireland (2010), Portugal (2011) and Cyprus (2013). The fact that these countries were subject to Stand-By Arrangements suggests that the balance of payments of individual Euro area members continues to be important, at least as far as the IMF is concerned. However, the main problem of these countries was not a balance of payments deficit but the indebtedness of the central and local governments and the inability to gain access to the capital market for financing the deficit. The Fund's staff has argued that budget financing needs could trigger the Fund to step in with balance of payments support. In the Fund's Executive Board, budget deficit financing (and not balance of payments deficits) has met some opposition. As IMF purchases have in effect been used as a source of budget financing and resources are made available directly to the government rather than to the central bank, there is a risk that repurchases become subject to a budget appropriation process that is subject to democratic control.

395. Concerns were also raised over the exceptional access to IMF financing given to EU countries (*see supra*, paragraphs 253 ff.), a model that the IMF was not ready to replicate for other regional groupings and was later repealed.

396. In February 2018, the Fund Executive Board discussed the issue of programme design in currency union. The Executive Directors provided general guidance on the IMF's engagement with currency union institutions in circumstances where the policies of said institutions are critical to the success of a Fund supported programme. The Chairman's summing up of the meeting was published in the *Selected Decisions and Selected Documents of the IMF*.

Chapter 6. Relationship with Regional Financing Arrangements

397. Only recently the IMF started to adapt its legal framework to the increased role of Regional Financing Arrangements (RFAs). In an RFA, a group of countries pledges common financial support to a member of the group that is experiencing balance of payments problems or external liquidity needs, either through a pool of contributed or borrowed reserves or through a swap of foreign exchange reserves. The Arab Monetary Fund, the Chiang Mai Initiative Multilateralization and the European Stability Mechanism are examples of RFAs.

398. In 2011, the Fund endorsed the G-20 'Principles for Cooperation between the IMF and RFAs'. The Principles acknowledged the importance of cooperation to promote regional and global financial stability, but the document merely recommended the sharing of information, timely consultations (not limited to crisis resolution joint missions but actually promoting complementarity in surveillance and crisis prevention) and an alignment of lending conditions to prevent arbitrage and facility shopping. By taking this cautious approach, the G-20 Principles also pointed out the need to respect roles, decision-making processes, independence and specificity of each RFA. No hierarchy of the IMF over RFAs was established. Only the IMF, however, is recognized to enjoy preferred creditor status (on which *see supra*, paragraphs 200 ff.).

399. In the aftermath of the global financial crisis, the Fund reconsidered developments in the global financial safety net (GFSN) and the need to strengthen it. In July 2017, building upon the G-20 Principles and on lessons derived from co-financing in Europe (*see supra*, paragraphs 389 ff.), the Fund adopted a new framework for collaboration with RFAs to increase the effective firepower of the GSFN and ensure the timely deployment of resources. IMF–RFAs collaboration should aim at combining the IMF's expertise in macroeconomic adjustment with the greater regional knowledge and country ownership of RFAs, exploiting complementarities and applying a coherent programme framework. The division of responsibilities between the IMF and the relevant RFA will be defined taking into account their respective mandates and technical expertise, while respecting institutional independence and recognizing differences in lending practices and governance structures.

Appendix 1. Articles of Agreement of the International Monetary Fund (as lastly amended on 2016)

Adopted at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 22, 1944. Entered into force December 27, 1945. Amended effective July 28, 1969, by the modifications approved by the Board of Governors in Resolution No. 23–5, adopted May 31, 1968; amended effective April 1, 1978, by the modifications approved by the Board of Governors in Resolution No. 31–4, adopted April 30, 1976; amended effective November 11,1992, by the modifications approved by the Board of Governors in Resolution No. 45–3, adopted June 28, 1990; amended effective August 10, 2009, by the modifications approved by the Board of Governors in Resolution No. 52–4, adopted September 23, 1997; amended effective February 18, 2011, by the modifications approved by the Board of Governors in Resolution No. 63–3, adopted May 5, 2008; and amended effective March 3, 2011, by the modifications approved by the Board of Governors in Resolution No. 63-2, adopted April 28, 2008; amended effective January 26, 2016 by the modifications approved by the Board of Governors in Resolution No. 66-2, adopted December 15, 2010.
The Governments on whose behalf the present Agreement is signed agree as follows:

Introductory Article

(i) The International Monetary Fund is established and shall operate in accordance with the provisions of this Agreement as originally adopted and subsequently amended.
(ii) To enable the Fund to conduct its operations and transactions, the Fund shall maintain a General Department and a Special Drawing Rights Department. Membership in the Fund shall give the right to participation in the Special Drawing Rights Department.
(iii) Operations and transactions authorized by this Agreement shall be conducted through the General Department, consisting in accordance with the provisions of this Agreement of the General Resources Account, the Special Disbursement Account, and the Investment Account; except that operations and transactions involving special drawing rights shall be conducted through the Special Drawing Rights Department.

Article I: Purposes

The purposes of the International Monetary Fund are:

(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of

employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.

(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.

Article II: Membership

Section 1 Original Members

The original members of the Fund shall be those of the countries represented at the United Nations Monetary and Financial Conference whose governments accept membership before December 31, 1945.

Section 2 Other Members

Membership shall be open to other countries at such times and in accordance with such terms as may be prescribed by the Board of Governors. These terms, including the terms for subscriptions, shall be based on principles consistent with those applied to other countries that are already members.

Article III: Quotas and Subscriptions

Section 1 Quotas and Payment of Subscriptions

Each member shall be assigned a quota expressed in special drawing rights. The quotas of the members represented at the United Nations Monetary and Financial Conference which accept membership before December 31, 1945 shall be those set forth in Schedule A. The quotas of other members shall be determined by the Board of Governors. The subscription of each member shall be equal to its quota and shall be paid in full to the Fund at the appropriate depository.

Section 2 Adjustment of Quotas

(a) The Board of Governors shall at intervals of not more than five years conduct a general review, and if it deems it appropriate propose an adjustment, of the quotas of the members. It may also, if it thinks fit, consider at any other time the adjustment of any particular quota at the request of the member concerned.

(b) The Fund may at any time propose an increase in the quotas of those members of the Fund that were members on August 31, 1975 in proportion to their quotas on that date in a cumulative amount not in excess of amounts transferred under Article V, Section 12(f)(i) and (j) from the Special Disbursement Account to the General Resources Account.
(c) An eighty-five per cent majority of the total voting power shall be required for any change in quotas.
(d) The quota of a member shall not be changed until the member has consented and until payment has been made unless payment is deemed to have been made in accordance with Section 3(b) of this Article.

Section 3 Payments when Quotas are Changed

(a) Each member which consents to an increase in its quota under Section 2(a) of this Article shall, within a period determined by the Fund, pay to the Fund twenty-five per cent of the increase in special drawing rights, but the Board of Governors may prescribe that this payment may be made, on the same basis for all members, in whole or in part in the currencies of other members specified, with their concurrence, by the Fund, or in the member's own currency. A non-participant shall pay in the currencies of other members specified by the Fund, with their concurrence, a proportion of the increase corresponding to the proportion to be paid in special drawing rights by participants. The balance of the increase shall be paid by the member in its own currency. The Fund's holdings of a member's currency shall not be increased above the level at which they would be subject to charges under Article V, Section 8(b)(ii), as a result of payments by other members under this provision.
(b) Each member which consents to an increase in its quota under Section 2(b) of this Article shall be deemed to have paid to the Fund an amount of subscription equal to such increase.
(c) If a member consents to a reduction in its quota, the Fund shall, within sixty days, pay to the member an amount equal to the reduction. The payment shall be made in the member's currency and in such amount of special drawing rights or the currencies of other members specified, with their concurrence, by the Fund as is necessary to prevent the reduction of the Fund's holdings of the currency below the new quota, provided that in exceptional circumstances the Fund may reduce its holdings of the currency below the new quota by payment to the member in its own currency.
(d) A seventy per cent majority of the total voting power shall be required for any decision under (a) above, except for the determination of a period and the specification of currencies under that provision.

Section 4 Substitution of Securities for Currency

The Fund shall accept from any member, in place of any part of the member's currency in the General Resources Account which in the judgment of the Fund is not needed for its operations and transactions, notes or similar obligations issued by the member or the depository designated by the member under Article XIII, Section 2, which shall be non-negotiable, non-interest bearing and payable at their face value on demand by crediting the account of the Fund in the designated depository. This Section shall apply not only to currency subscribed by members but also to any currency otherwise due to, or acquired by, the Fund and to be placed in the General Resources Account.

Article IV: Obligations Regarding Exchange Arrangements

Section 1 General Obligations of Members

Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates. In particular, each member shall:

(i) endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;
(ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;
(iii) avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and
(iv) follow exchange policies compatible with the undertakings under this Section.

Section 2 General Exchange Arrangements

(a) Each member shall notify the Fund, within thirty days after the date of the second amendment of this Agreement, of the exchange arrangements it intends to apply in fulfillment of its obligations under Section 1 of this Article, and shall notify the Fund promptly of any changes in its exchange arrangements.
(b) Under an international monetary system of the kind prevailing on January 1, 1976, exchange arrangements may include (i) the maintenance by a member of a value for its currency in terms of the special drawing right or another denominator, other than gold, selected by the member, or (ii) cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, or (iii) other exchange arrangements of a member's choice.
(c) To accord with the development of the international monetary system, the Fund, by an eighty-five per cent majority of the total voting power, may make provision for general exchange arrangements without limiting the right of members

to have exchange arrangements of their choice consistent with the purposes of the Fund and the obligations under Section 1 of this Article.

Section 3 Surveillance over Exchange Arrangements

(a) The Fund shall oversee the international monetary system in order to ensure its effective operation, and shall oversee the compliance of each member with its obligations under Section 1 of this Article.
(b) In order to fulfill its functions under (a) above, the Fund shall exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies. Each member shall provide the Fund with the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member's exchange rate policies. The principles adopted by the Fund shall be consistent with cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, as well as with other exchange arrangements of a member's choice consistent with the purposes of the Fund and Section 1 of this Article. These principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members.

Section 4 Par Values

The Fund may determine, by an eighty-five per cent majority of the total voting power, that international economic conditions permit the introduction of a widespread system of exchange arrangements based on stable but adjustable par values. The Fund shall make the determination on the basis of the underlying stability of the world economy, and for this purpose shall take into account price movements and rates of expansion in the economies of members. The determination shall be made in light of the evolution of the international monetary system, with particular reference to sources of liquidity, and, in order to ensure the effective operation of a system of par values, to arrangements under which both members in surplus and members in deficit in their balances of payments take prompt, effective, and symmetrical action to achieve adjustment, as well as to arrangements for intervention and the treatment of imbalances. Upon making such determination, the Fund shall notify members that the provisions of Schedule C apply.

Section 5 Separate Currencies within a Member's Territories

(a) Action by a member with respect to its currency under this Article shall be deemed to apply to the separate currencies of all territories in respect of which the member has accepted this Agreement under Article XXXI, Section 2 (g) unless the member declares that its action relates either to the metropolitan currency alone, or only to one or more specified separate currencies, or to the metropolitan currency and one or more specified separate currencies.

(b) Action by the Fund under this Article shall be deemed to relate to all currencies of a member referred to in (a) above unless the Fund declares otherwise.

Article V: Operations and Transactions of the Fund

Section 1 Agencies Dealing with the Fund

Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies.

Section 2 Limitation on the Fund's Operations and Transactions

(a) Except as otherwise provided in this Agreement, transactions on the account of the Fund shall be limited to transactions for the purpose of supplying a member, on the initiative of such member, with special drawing rights or the currencies of other members from the general resources of the Fund, which shall be held in the General Resources Account, in exchange for the currency of the member desiring to make the purchase.

(b) If requested, the Fund may decide to perform financial and technical services, including the administration of resources contributed by members, that are consistent with the purposes of the Fund. Operations involved in the performance of such financial services shall not be on the account of the Fund. Services under this subsection shall not impose any obligation on a member without its consent.

Section 3 Conditions Governing Use of the Fund's General Resources

(a) The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.

(b) A member shall be entitled to purchase the currencies of other members from the Fund in exchange for an equivalent amount of its own currency subject to the following conditions:

   (i) the member's use of the general resources of the Fund would be in accordance with the provisions of this Agreement and the policies adopted under them;

   (ii) the member represents that it has a need to make the purchase because of its balance of payments or its reserve position or developments in its reserves;

(iii) the proposed purchase would be a reserve tranche purchase, or would not cause the Fund's holdings of the purchasing member's currency to exceed two hundred per cent of its quota;

(iv) the Fund has not previously declared under Section 5 of this Article, Article VI, Section 1, or Article XXVI, Section 2 (a) that the member desiring to purchase is ineligible to use the general resources of the Fund.

(c) The Fund shall examine a request for a purchase to determine whether the proposed purchase would be consistent with the provisions of this Agreement and the policies adopted under them, provided that requests for reserve tranche purchases shall not be subject to challenge.

(d) The Fund shall adopt policies and procedures on the selection of currencies to be sold that take into account, in consultation with members, the balance of payments and reserve position of members and developments in the exchange markets, as well as the desirability of promoting over time balanced positions in the Fund, provided that if a member represents that it is proposing to purchase the currency of another member because the purchasing member wishes to obtain an equivalent amount of its own currency offered by the other member, it shall be entitled to purchase the currency of the other member unless the Fund has given notice under Article VII, Section 3 that its holdings of the currency have become scarce

(e)

(i) Each member shall ensure that balances of its currency purchased from the Fund are balances of a freely usable currency or can be exchanged at the time of purchase for a freely usable currency of its choice at an exchange rate between the two currencies equivalent to the exchange rate between them on the basis of Article XIX, Section 7(a).

(ii) Each member whose currency is purchased from the Fund or is obtained in exchange for currency purchased from the Fund shall collaborate with the Fund and other members to enable such balances of its currency to be exchanged, at the time of purchase, for the freely usable currencies of other members.

(iii) An exchange under (i) above of a currency that is not freely usable shall be made by the member whose currency is purchased unless that member and the purchasing member agree on another procedure.

(iv) A member purchasing from the Fund the freely usable currency of another member and wishing to exchange it at the time of purchase for another freely usable currency shall make the exchange with the other member if requested by that member. The exchange shall be made for a freely usable currency selected by the other member at the rate of exchange referred to in (i) above.

(f) Under policies and procedures which it shall adopt, the Fund may agree to provide a participant making a purchase in accordance with this Section with special drawing rights instead of the currencies of other members.

Section 4 Waiver of Conditions

The Fund may in its discretion, and on terms which safeguard its interests, waive any of the conditions prescribed in Section 3(b)(iii) and (iv) of this Article, especially in the case of members with a record of avoiding large or continuous use of the Fund's general resources. In making a waiver it shall take into consideration periodic or exceptional requirements of the member requesting the waiver. The Fund shall also take into consideration a member's willingness to pledge as collateral security acceptable assets having a value sufficient in the opinion of the Fund to protect its interests and may require as a condition of waiver the pledge of such collateral security.

Section 5 Ineligibility to Use the Fund's General Resources

Whenever the Fund is of the opinion that any member is using the general resources of the Fund in a manner contrary to the purposes of the Fund, it shall present to the member a report setting forth the views of the Fund and prescribing a suitable time for reply. After presenting such a report to a member, the Fund may limit the use of its general resources by the member. If no reply to the report is received from the member within the prescribed time, or if the reply received is unsatisfactory, the Fund may continue to limit the member's use of the general resources of the Fund or may, after giving reasonable notice to the member, declare it ineligible to use the general resources of the Fund.

Section 6 Other Purchases and Sales of Special Drawing Rights by the Fund

(a) The Fund may accept special drawing rights offered by a participant in exchange for an equivalent amount of the currencies of other members.
(b) The Fund may provide a participant, at its request, with special drawing rights for an equivalent amount of the currencies of other members. The Fund's holdings of a member's currency shall not be increased as a result of these transactions above the level at which the holdings would be subject to charges under Section 8(b)(ii) of this Article.

(c) The currencies provided or accepted by the Fund under this Section shall be selected in accordance with policies that take into account the principles of Section 3(d) or 7(i) of this Article. The Fund may enter into transactions under this Section only if a member whose currency is provided or accepted by the Fund concurs in that use of its currency.

Section 7 Repurchase by a Member of its Currency Held by the Fund

(a) A member shall be entitled to repurchase at any time the Fund's holdings of its currency that are subject to charges under Section 8(b) of this Article.
(b) A member that has made a purchase under Section 3 of this Article will be expected normally, as its balance of payments and reserve position improves, to repurchase the Fund's holdings of its currency that result from the purchase and are subject to charges under Section 8(b) of this Article. A member shall repurchase these holdings if, in accordance with policies on repurchase that the Fund shall adopt and after consultation with the member, the Fund represents to the member that it should repurchase because of an improvement in its balance of payments and reserve position.
(c) A member that has made a purchase under Section 3 of this Article shall repurchase the Fund's holdings of its currency that result from the purchase and are subject to charges under Section 8(b) of this Article not later than five years after the date on which the purchase was made. The Fund may prescribe that repurchase shall be made by a member in installments during the period beginning three years and ending five years after the date of a purchase. The Fund, by an eighty-five per cent majority of the total voting power, may change the periods for repurchase under this subsection, and any period so adopted shall apply to all members.
(d) The Fund, by an eighty-five per cent majority of the total voting power, may adopt periods other than those that apply in accordance with (c) above, which shall be the same for all members, for the repurchase of holdings of currency acquired by the Fund pursuant to a special policy on the use of its general resources.
(e) A member shall repurchase, in accordance with policies that the Fund shall adopt by a seventy per cent majority of the total voting power, the Fund's holdings of its currency that are not acquired as a result of purchases and are subject to charges under Section 8(b)(ii) of this Article.
(f) A decision prescribing that under a policy on the use of the general resources of the Fund the period for repurchase under (c) or (d) above shall be shorter than the one in effect under the policy shall apply only to holdings acquired by the Fund subsequent to the effective date of the decision.
(g) The Fund, on the request of a member, may postpone the date of discharge of a repurchase obligation, but not beyond the maximum period under (c) or (d) above or under policies adopted by the Fund under (e) above, unless the Fund determines, by a seventy per cent majority of the total voting power, that a longer period for repurchase which is consistent with the temporary use of the

general resources of the Fund is justified because discharge on the due date would result in exceptional hardship for the member.

(h) The Fund's policies under Section 3(d) of this Article may be supplemented by policies under which the Fund may decide after consultation with a member to sell under Section 3(b) of this Article its holdings of the member's currency that have not been repurchased in accordance with this Section 7, without prejudice to any action that the Fund may be authorized to take under any other provision of this Agreement.

(i) All repurchases under this Section shall be made with special drawing rights or with the currencies of other members specified by the Fund. The Fund shall adopt policies and procedures with regard to the currencies to be used by members in making repurchases that take into account the principles in Section 3(d) of this Article. The Fund's holdings of a member's currency that is used in repurchase shall not be increased by the repurchase above the level at which they would be subject to charges under Section 8(b)(ii) of this Article.

(j)

- (i) If a member's currency specified by the Fund under (i) above is not a freely usable currency, the member shall ensure that the repurchasing member can obtain it at the time of the repurchase in exchange for a freely usable currency selected by the member whose currency has been specified. An exchange of currency under this provision shall take place at an exchange rate between the two currencies equivalent to the exchange rate between them on the basis of Article XIX, Section 7(a).
- (ii) Each member whose currency is specified by the Fund for repurchase shall collaborate with the Fund and other members to enable repurchasing members, at the time of the repurchase, to obtain the specified currency in exchange for the freely usable currencies of other members.
- (iii) An exchange under (j)(i) above shall be made with the member whose currency is specified unless that member and the repurchasing member agree on another procedure.
- (iv) If a repurchasing member wishes to obtain, at the time of the repurchase, the freely usable currency of another member specified by the Fund under (i) above, it shall, if requested by the other member, obtain the currency from the other member in exchange for a freely usable currency at the rate of exchange referred to in (j)(i) above. The Fund may adopt regulations on the freely usable currency to be provided in an exchange.

Section 8 Charges

(a)

- (i) The Fund shall levy a service charge on the purchase by a member of special drawing rights or the currency of another member held in the General Resources Account in exchange for its own currency, provided that the Fund may levy a lower service charge on reserve tranche purchases than on other purchases. The service charge on reserve tranche purchases shall not exceed one-half of one per cent.

(ii) The Fund may levy a charge for stand-by or similar arrangements. The Fund may decide that the charge for an arrangement shall be offset against the service charge levied under (i) above on purchases under the arrangement.

(b) The Fund shall levy charges on its average daily balances of a member's currency held in the General Resources Account to the extent that they

(i) have been acquired under a policy that has been the subject of an exclusion under Article XXX(c), or

(ii) exceed the amount of the member's quota after excluding any balances referred to in (i) above.

The rates of charge normally shall rise at intervals during the period in which the balances are held.

(c) If a member fails to make a repurchase required under Section 7 of this Article, the Fund, after consultation with the member on the reduction of the Fund's holdings of its currency, may impose such charges as the Fund deems appropriate on its holdings of the member's currency that should have been repurchased.

(d) A seventy per cent majority of the total voting power shall be required for the determination of the rates of charge under (a) and (b) above, which shall be uniform for all members, and under (c) above.

(e) A member shall pay all charges in special drawing rights, provided that in exceptional circumstances the Fund may permit a member to pay charges in the currencies of other members specified by the Fund, after consultation with them, or in its own currency. The Fund's holdings of a member's currency shall not be increased as a result of payments by other members under this provision above the level at which they would be subject to charges under (b)(ii) above.

Section 9 Remuneration

(a) The Fund shall pay remuneration on the amount by which the percentage of quota prescribed under (b) or (c) below exceeds the Fund's average daily balances of a member's currency held in the General Resources Account other than balances acquired under a policy that has been the subject of an exclusion under Article XXX(c). The rate of remuneration, which shall be determined by the Fund by a seventy per cent majority of the total voting power, shall be the same for all members and shall be not more than, nor less than four-fifths of, the rate of interest under Article XX, Section 3. In establishing the rate of remuneration, the Fund shall take into account the rates of charge under Article V, Section 8(b).

(b) The percentage of quota applying for the purposes of (a) above shall be:

(i) for each member that became a member before the second amendment of this Agreement, a percentage of quota corresponding to seventy-five per cent of its quota on the date of the second amendment of this Agreement, and for each member that became a member after the date of the second amendment of this Agreement, a percentage of quota calculated by dividing the total of the amounts corresponding to the percentages of quota that apply to the other members on the date on which the member became a member by the total of the quotas of the other members on the same date; plus

(ii) the amounts it has paid to the Fund in currency or special drawing rights under Article III, Section 3(a) since the date applicable under (b)(i) above; and minus

(iii) the amounts it has received from the Fund in currency or special drawing rights under Article III, Section 3(c) since the date applicable under (b)(i) above.

(c) The Fund, by a seventy per cent majority of the total voting power, may raise the latest percentage of quota applying for the purposes of (a) above to each member to:

(i) a percentage, not in excess of one hundred per cent, that shall be determined for each member on the basis of the same criteria for all members, or

(ii) one hundred per cent for all members.

(d) Remuneration shall be paid in special drawing rights, provided that either the Fund or the member may decide that the payment to the member shall be made in its own currency.

Section 10 Computations

(a) The value of the Fund's assets held in the accounts of the General Department shall be expressed in terms of the special drawing right.

(b) All computations relating to currencies of members for the purpose of applying the provisions of this Agreement, except Article IV and Schedule C, shall be at the rates at which the Fund accounts for these currencies in accordance with Section 11 of this Article.

(c) Computations for the determination of amounts of currency in relation to quota for the purpose of applying the provisions of this Agreement shall not include currency held in the Special Disbursement Account or in the Investment Account.

Section 11 Maintenance of Value

(a) The value of the currencies of members held in the General Resources Account shall be maintained in terms of the special drawing right in accordance with exchange rates under Article XIX, Section 7(a).

(b) An adjustment in the Fund's holdings of a member's currency pursuant to this Section shall be made on the occasion of the use of that currency in an operation or transaction between the Fund and another member and at such other times as the Fund may decide or the member may request. Payments to or by the Fund in respect of an adjustment shall be made within a reasonable time, as determined by the Fund, after the date of adjustment, and at any other time requested by the member.

Section 12 Other Operations and Transactions

(a) The Fund shall be guided in all its policies and decisions under this Section by the objectives set forth in Article VIII, Section 7 and by the objective of avoiding the management of the price, or the establishment of a fixed price, in the gold market.
(b) Decisions of the Fund to engage in operations or transactions under (c), (d), and (e) below shall be made by an eighty-five per cent majority of the total voting power.
(c) The Fund may sell gold for the currency of any member after consulting the member for whose currency the gold is sold, provided that the Fund's holdings of a member's currency held in the General Resources Account shall not be increased by the sale above the level at which they would be subject to charges under Section 8(b)(ii) of this Article without the concurrence of the member, and provided that, at the request of the member, the Fund at the time of sale shall exchange for the currency of another member such part of the currency received as would prevent such an increase. The exchange of a currency for the currency of another member shall be made after consultation with that member, and shall not increase the Fund's holdings of that member's currency above the level at which they would be subject to charges under Section 8(b)(ii) of this Article. The Fund shall adopt policies and procedures with regard to exchanges that take into account the principles applied under Section 7(i) of this Article. Sales under this provision to a member shall be at a price agreed for each transaction on the basis of prices in the market.
(d) The Fund may accept payments from a member in gold instead of special drawing rights or currency in any operations or transactions under this Agreement. Payments to the Fund under this provision shall be at a price agreed for each operation or transaction on the basis of prices in the market.
(e) The Fund may sell gold held by it on the date of the second amendment of this Agreement to those members that were members on August 31, 1975 and that agree to buy it, in proportion to their quotas on that date. If the Fund intends to sell gold under (c) above for the purpose of (f)(ii) below, it may sell to each developing member that agrees to buy it that portion of the gold which, if sold under (c) above, would have produced the excess that could have been distributed to it under (f)(iii) below. The gold that would be sold under this provision to a member that has been declared ineligible to use the general resources of the Fund under Section 5 of this Article shall be sold to it when the ineligibility ceases, unless the Fund decides to make the sale sooner. The sale of gold to a member under this subsection (e) shall be made in exchange for its currency and at a price equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold.

(f) Whenever under (c) above the Fund sells gold held by it on the date of the second amendment of this Agreement, an amount of the proceeds equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold shall be placed in the General Resources Account and, except as the Fund may decide otherwise under (g) below, any excess shall be held in the Special Disbursement Account. The assets held in the Special Disbursement Account shall be held separately from the other accounts of the General Department, and may be used at any time:
   (i) to make transfers to the General Resources Account for immediate use in operations and transactions authorized by provisions of this Agreement other than this Section;
   (ii) for operations and transactions that are not authorized by other provisions of this Agreement but are consistent with the purposes of the Fund. Under this subsection (f)(ii) balance of payments assistance may be made available on special terms to developing members in difficult circumstances, and for this purpose the Fund shall take into account the level of per capita income;
   (iii) for distribution to those developing members that were members on August 31, 1975, in proportion to their quotas on that date, of such part of the assets that the Fund decides to use for the purposes of (ii) above as corresponds to the proportion of the quotas of these members on the date of distribution to the total of the quotas of all members on the same date, provided that the distribution under this provision to a member that has been declared ineligible to use the general resources of the Fund under Section 5 of this Article shall be made when the ineligibility ceases, unless the Fund decides to make the distribution sooner.

   Decisions to use assets pursuant to (i) above shall be taken by a seventy per cent majority of the total voting power, and decisions pursuant to (ii) and (iii) above shall be taken by an eighty-five per cent majority of the total voting power.

(g) The Fund may decide, by an eighty-five per cent majority of the total voting power, to transfer a part of the excess referred to in (f) above to the Investment Account for use pursuant to the provisions of Article XII, Section 6(f).

(h) Pending uses specified under (f) above, the Fund may use a member's currency held in the Special Disbursement Account for investment as it may determine, in accordance with rules and regulations adopted by the Fund by a seventy per cent majority of the total voting power. The income of investment and interest received under (f)(ii) above shall be placed in the Special Disbursement Account.

(i) The General Resources Account shall be reimbursed from time to time in respect of the expenses of administration of the Special Disbursement Account paid from the General Resources Account by transfers from the Special Disbursement Account on the basis of a reasonable estimate of such expenses.

(j) The Special Disbursement Account shall be terminated in the event of the liquidation of the Fund and may be terminated prior to liquidation of the Fund by a seventy per cent majority of the total voting power. Upon termination of the account because of the liquidation of the Fund, any assets in this account shall be distributed in accordance with the provisions of Schedule K. Upon termination prior to liquidation of the Fund, any assets in this account shall be transferred to the General Resources Account for immediate use in operations and transactions. The Fund, by a seventy per cent majority of the total voting power, shall adopt rules and regulations for the administration of the Special Disbursement Account.

(k) Whenever under (c) above the Fund sells gold acquired by it after the date of the second amendment of this Agreement, an amount of the proceeds equivalent to the acquisition price of the gold shall be placed in the General Resources Account, and any excess shall be placed in the Investment Account for use pursuant to the provisions of Article XII, Section 6(f). If any gold acquired by the Fund after the date of the second amendment of this Agreement is sold after April 7, 2008 but prior to the date of entry into force of this provision, then, upon the entry into force of this provision, and notwithstanding the limit set forth in Article XII, Section 6(f)(ii), the Fund shall transfer to the Investment Account from the General Resources Account an amount equal to the proceeds of such sale less (i) the acquisition price of the gold sold, and (ii) any amount of such proceeds in excess of the acquisition price that may have already been transferred to the Investment Account prior to the date of entry into force of this provision.

Article VI: Capital Transfers

Section 1 Use of the Fund's General Resources for Capital Transfers

(a) A member may not use the Fund's general resources to meet a large or sustained outflow of capital except as provided in Section 2 of this Article, and the Fund may request a member to exercise controls to prevent such use of the general resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the general resources of the Fund.

(b) Nothing in this Section shall be deemed:

   (i) to prevent the use of the general resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking, or other business; or

(ii) to affect capital movements which are met out of a member's own resources, but members undertake that such capital movements will be in accordance with the purposes of the Fund.

Section 2 Special Provisions for Capital Transfers

A member shall be entitled to make reserve tranche purchases to meet capital transfers.

Section 3 Controls of Capital Transfers

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b) and in Article XIV, Section 2.

Article VII: Replenishment and Scarce Currencies

Section 1 Measures to Replenish the Fund's Holdings of Currencies

The Fund may, if it deems such action appropriate to replenish its holdings of any member's currency in the General Resources Account needed in connection with its transactions, take either or both of the following steps:

(i) propose to the member that, on terms and conditions agreed between the Fund and the member, the latter lend its currency to the Fund or that, with the concurrence of the member, the Fund borrow such currency from some other source either within or outside the territories of the member, but no member shall be under any obligation to make such loans to the Fund or to concur in the borrowing of its currency by the Fund from any other source;

(ii) require the member, if it is a participant, to sell its currency to the Fund for special drawing rights held in the General Resources Account, subject to Article XIX, Section 4. In replenishing with special drawing rights, the Fund shall pay due regard to the principles of designation under Article XIX, Section 5.

Section 2 General Scarcity of Currency

If the Fund finds that a general scarcity of a particular currency is developing, the Fund may so inform members and may issue a report setting forth the causes of the scarcity and containing recommendations designed to bring it to an end. A representative of the member whose currency is involved shall participate in the preparation of the report.

Section 3 Scarcity of the Fund's Holdings

(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 2 of this Article, shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation, and any other pertinent considerations. The Fund shall also issue a report concerning its action.

(b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV and Schedule C, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question, and they shall be relaxed and removed as rapidly as conditions permit.

(c) The authorization under (b) above shall expire whenever the Fund formally declares the currency in question to be no longer scarce.

Section 4 Administration of Restrictions

Any member imposing restrictions in respect of the currency of any other member pursuant to the provisions of Section 3(b) of this Article shall give sympathetic consideration to any representations by the other member regarding the administration of such restrictions.

Section 5 Effect of Other International Agreements on Restrictions

Members agree not to invoke the obligations of any engagements entered into with other members prior to this Agreement in such manner as will prevent the operation of the provisions of this Article.

Article VIII: General Obligations of Members

Section 1 Introduction

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2 Avoidance of Restrictions on Current Payments

(a) Subject to the provisions of Article VII, Section 3(b) and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Section 3 Avoidance of Discriminatory Currency Practices

No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any discriminatory currency arrangements or multiple currency practices, whether within or outside margins under Article IV or prescribed by or under Schedule C, except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force, the member concerned shall consult with the Fund as to their progressive removal unless they are maintained or imposed under Article XIV, Section 2, in which case the provisions of Section 3 of that Article shall apply.

Section 4 Convertibility of Foreign-Held Balances

(a) Each member shall buy balances of its currency held by another member if the latter, in requesting the purchase, represents:
   (i) that the balances to be bought have been recently acquired as a result of current transactions; or
   (ii) that their conversion is needed for making payments for current transactions.

   The buying member shall have the option to pay either in special drawing rights, subject to Article XIX, Section 4, or in the currency of the member making the request.

(b) The obligation in (a) above shall not apply when:
   (i) the convertibility of the balances has been restricted consistently with Section 2 of this Article or Article VI, Section 3;
   (ii) the balances have accumulated as a result of transactions effected before the removal by a member of restrictions maintained or imposed under Article XIV, Section 2;
   (iii) the balances have been acquired contrary to the exchange regulations of the member which is asked to buy them;
   (iv) the currency of the member requesting the purchase has been declared scarce under Article VII, Section 3 (a); or
   (v) the member requested to make the purchase is for any reason not entitled to buy currencies of other members from the Fund for its own currency.

Section 5 Furnishing of Information

(a) The Fund may require members to furnish it with such information as it deems necessary for its activities, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on the following matters:

(i) official holdings at home and abroad of (1) gold, (2) foreign exchange;
(ii) holdings at home and abroad by banking and financial agencies, other than official agencies, of (1) gold, (2) foreign exchange;
(iii) production of gold;
(iv) gold exports and imports according to countries of destination and origin;
(v) total exports and imports of merchandise, in terms of local currency values, according to countries of destination and origin;
(vi) international balance of payments, including (1) trade in goods and services, (2) gold transactions, (3) known capital transactions, and (4) other items;
(vii) international investment position, i.e., investments within the territories of the member owned abroad and investments abroad owned by persons in its territories so far as it is possible to furnish this information;
(viii) national income;
(ix) price indices, i.e., indices of commodity prices in wholesale and retail markets and of export and import prices;
(x) buying and selling rates for foreign currencies;
(xi) exchange controls, i.e., a comprehensive statement of exchange controls in effect at the time of assuming membership in the Fund and details of subsequent changes as they occur; and
(xii) where official clearing arrangements exist, details of amounts awaiting clearance in respect of commercial and financial transactions, and of the length of time during which such arrears have been outstanding.

(b) In requesting information the Fund shall take into consideration the varying ability of members to furnish the data requested. Members shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Members undertake, however, to furnish the desired information in as detailed and accurate a manner as is practicable and, so far as possible, to avoid mere estimates.

(c) The Fund may arrange to obtain further information by agreement with members. It shall act as a centre for the collection and exchange of information on monetary and financial problems, thus facilitating the preparation of studies designed to assist members in developing policies which further the purposes of the Fund.

Section 6 Consultation between Members Regarding Existing International Agreements

Where under this Agreement a member is authorized in the special or temporary circumstances specified in the Agreement to maintain or establish restrictions on exchange transactions, and there are other engagements between members entered into prior to this Agreement which conflict with the application of such restrictions, the parties to such engagements shall consult with one another with a view to making such mutually acceptable adjustments as may be necessary. The provisions of this Article shall be without prejudice to the operation of Article VII, Section 5.

Section 7 Obligation to Collaborate regarding Policies on Reserve Assets

Each member undertakes to collaborate with the Fund and with other members in order to ensure that the policies of the member with respect to reserve assets shall be consistent with the objectives of promoting better international surveillance of international liquidity and making the special drawing right the principal reserve asset in the international monetary system.

Article IX: Status, Immunities, and Privileges

Section 1 Purposes of Article

To enable the Fund to fulfill the functions with which it is entrusted, the status, immunities, and privileges set forth in this Article shall be accorded to the Fund in the territories of each member.

Section 2 Status of the Fund

The Fund shall possess full juridical personality, and in particular, the capacity:

(i) to contract;
(ii) to acquire and dispose of immovable and movable property; and

(iii) to institute legal proceedings.

Section 3 Immunity from Judicial Process

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

Section 4 Immunity from Other Action

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, or any other form of seizure by executive or legislative action.

Section 5 Immunity of Archives

The archives of the Fund shall be inviolable.

Section 6 Freedom of Assets from Restrictions

To the extent necessary to carry out the activities provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

Section 7 Privilege for Communications

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

Section 8 Immunities and Privileges of Officers and Employees

All Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, Section 3(j), advisors of any of the foregoing persons, officers, and employees of the Fund:

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity;
(ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements, and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members; and

(iii) shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials, and employees of comparable rank of other members.

Section 9 Immunities from Taxation

(a) The Fund, its assets, property, income, and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.
(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers, or employees of the Fund who are not local citizens, local subjects, or other local nationals.
(c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held:
  (i) which discriminates against such obligation or security solely because of its origin; or
  (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

Section 10 Application of Article

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken.

Article X: Relations with Other International Organizations

The Fund shall cooperate within the terms of this Agreement with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article XXVIII.

Article XI: Relations with Non-member Countries

Section 1 Undertakings Regarding Relations with Non-member Countries
Each member undertakes:

(i) not to engage in, nor to permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any transactions with a non-member or with persons in a non-member's territories which would be contrary to the provisions of this Agreement or the purposes of the Fund;
(ii) not to cooperate with a non-member or with persons in a non-member's territories in practices which would be contrary to the provisions of this Agreement or the purposes of the Fund; and

(iii) to cooperate with the Fund with a view to the application in its territories of appropriate measures to prevent transactions with non-members or with persons in their territories which would be contrary to the provisions of this Agreement or the purposes of the Fund.

Section 2 Restrictions on Transactions with Non-member Countries

Nothing in this Agreement shall affect the right of any member to impose restrictions on exchange transactions with non-members or with persons in their territories unless the Fund finds that such restrictions prejudice the interests of members and are contrary to the purposes of the Fund.

Article XII: Organization and Management

Section 1 Structure of the Fund

The Fund shall have a Board of Governors, an Executive Board, a Managing Director, and a staff, and a Council if the Board of Governors decides, by an eighty-five per cent majority of the total voting power, that the provisions of Schedule D shall be applied.

Section 2 Board of Governors

(a) All powers under this Agreement not conferred directly on the Board of Governors, the Executive Board, or the Managing Director shall be vested in the Board of Governors. The Board of Governors shall consist of one Governor and one Alternate appointed by each member in such manner as it may determine. Each Governor and each Alternate shall serve until a new appointment is made. No Alternate may vote except in the absence of his principal. The Board of Governors shall select one of the Governors as Chairman.
(b) The Board of Governors may delegate to the Executive Board authority to exercise any powers of the Board of Governors, except the powers conferred directly by this Agreement on the Board of Governors.
(c) The Board of Governors shall hold such meetings as may be provided for by the Board of Governors or called by the Executive Board. Meetings of the Board of Governors shall be called whenever requested by fifteen members or by members having one-quarter of the total voting power.
(d) A quorum for any meeting of the Board of Governors shall be a majority of the Governors having not less than two-thirds of the total voting power.
(e) Each Governor shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.
(f) The Board of Governors may by regulation establish a procedure whereby the Executive Board, when it deems such action to be in the best interests of the Fund, may obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.
(g) The Board of Governors, and the Executive Board to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Fund.

(h) Governors and Alternates shall serve as such without compensation from the Fund, but the Fund may pay them reasonable expenses incurred in attending meetings.
(i) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and their Alternates and the salary and terms of the contract of service of the Managing Director.
(j) The Board of Governors and the Executive Board may appoint such committees as they deem advisable. Membership of committees need not be limited to Governors or Executive Directors or their Alternates.

Section 3 Executive Board

(a) The Executive Board shall be responsible for conducting the business of the Fund, and for this purpose shall exercise all the powers delegated to it by the Board of Governors.
(b) Subject to (c) below, the Executive Board shall consist of twenty Executive Directors elected by the members, with the Managing Director as chairman.
(c) For the purpose of each regular election of Executive Directors, the Board of Governors, by an eighty-five per cent majority of the total voting power, may increase or decrease the number of Executive Directors specified in (ii) above.
(d) Elections of Executive Directors shall be conducted at internals of two years in accordance with regulations which shall be adopted by the Board of Governors. Such regulations shall include a limit on the total number of votes that more than one member may cast for the same candidate.
(e) Each Executive Director shall appoint an Alternate with full power to act for him when he is not present, provided that the Board of Governors may adopt rules enabling an Executive Director elected by more than a specified number of members to appoint two Alternates. Such rules, if adopted, may only be modified in the context of the regular election of Executive Directors and shall require an Executive Director appointing two Alternates to designate: (i) the Alternate who shall act for the Executive Director when he is not present and both Alternates are present and (ii) the Alternate who shall exercise the powers of the Executive Director under (f) below. When the Executive Directors appointing them are present, Alternates may participate in meetings but may not vote.
(f) Executive Directors shall continue in office until their successors are elected. If the office of an Executive Director becomes vacant more than ninety days before the end of his term, another Executive Director shall be elected for the remainder of the term by the members that elected the former Executive Director. A majority of the votes cast shall be required for election. While the office remains vacant, the Alternate of the former Executive Director shall exercise his powers, except that of appointing an Alternate.
(g) The Executive Board shall function in continuous session at the principal office of the Fund and shall meet as often as the business of the Fund may require

(h) A quorum for any meeting of the Executive Board shall be a majority of the Executive Directors having not less than one-half of the total voting power(i) Each Executive Directors hall be entitled to cast the number of votes which counted towards his election

(i) When the provisions of Section 5(*b*) of this Article are applicable, the votes which an Executive Director would otherwise be entitled to cast shall be increased or decreased correspondingly. All the votes which an Executive Director is entitled to cast shall be cast as a unit.

(ii) When the suspension of the voting rights of a member is terminated under Article XXVI, Section 2(*b*), the member may agree with all the members that have elected an Executive Director that the number of votes allotted to that member shall be cast by such Executive Director, provided that, if no regular election of Executive Directors has been conducted during the period of the suspension, the Executive Director in whose election the member had participated prior to the suspension, or his successor elected in accordance with paragraph 3(*c*)(i) of Schedule L or with (*f*) above, shall be entitled to cast the number of votes allotted to the member. The member shall be deemed to have participated in the election of the Executive Director entitled to cast the number of votes allotted to the member.

(j) The Board of Governors shall adopt regulations under which a member may send a representative to attend any meeting of the Executive Board when a request made by, or a matter particularly affecting, that member is under consideration.

Section 4 Managing Director and Staff

(a) The Executive Board shall select a Managing Director who shall not be a Governor or an Executive Director. The Managing Director shall be chairman of the Executive Board, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The Managing Director shall cease to hold office when the Executive Board so decides.

(b) The Managing Director shall be chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Board, the ordinary business of the Fund. Subject to the general control of the Executive Board, he shall be responsible for the organization, appointment, and dismissal of the staff of the Fund.

(c) The Managing Director and the staff of the Fund, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each member of the Fund shall respect the international character of this duty and shall refrain from all attempts to influence any of the staff in the discharge of these functions.

(d) In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

Section 5 Voting

(a) The total votes of each member shall be equal to the sum of its basic votes and its quota-based votes.
   (i) The basic votes of each member shall be the number of votes that results from the equal distribution among all the members of 5.502 per cent of the aggregate sum of the total voting power of all the members, provided that there shall be no fractional basic votes.
   (ii) The quota-based votes of each member shall be the number of votes that results from the allocation of one vote for each part of its quota equivalent to one hundred thousand special drawing rights.
(b) Whenever voting is required under Article V, Section 4 or 5, each member shall have the number of votes to which it is entitled under (a) above adjusted
   (i) by the addition of one vote for the equivalent of each four hundred thousand special drawing rights of net sales of its currency from the general resources of the Fund up to the date when the vote is taken, or
   (ii) by the subtraction of one vote for the equivalent of each four hundred thousand special drawing rights of its net purchases under Article V, Section 3(b) and (f) up to the date when the vote is taken, provided that neither net purchases nor net sales shall be deemed at any time to exceed an amount equal to the quota of the member involved.
(c) Except as otherwise specifically provided, all decisions of the Fund shall be made by a majority of the votes cast.

Section 6 Reserves, Distribution of Net Income, and Investment

(a) The Fund shall determine annually what part of its net income shall be placed to general reserve or special reserve, and what part, if any, shall be distributed.
(b) The Fund may use the special reserve for any purpose for which it may use the general reserve, except distribution.
(c) If any distribution is made of the net income of any year, it shall be made to all members in proportion to their quotas.
(d) The Fund, by a seventy per cent majority of the total voting power, may decide at any time to distribute any part of the general reserve. Any such distribution shall be made to all members in proportion to their quotas.
(e) Payments under (c) and (d) above shall be made in special drawing rights, provided that either the Fund or the member may decide that the payment to the member shall be made in its own currency.
(f)

(i) The Fund may establish an Investment Account for the purposes of this subsection (f). The assets of the Investment Account shall be held separately from the other accounts of the General Department.

(ii) The Fund may decide to transfer to the Investment Account a part of the proceeds of the sale of gold in accordance with Article V, Section 12(g) and, by a seventy per cent majority of the total voting power, may decide to transfer to the Investment Account, for immediate investment, currencies held in the General Resources Account. The amount of these transfers shall not exceed the total amount of the general reserve and the special reserve at the time of the decision.

(iii) The Fund may use a member's currency held in the Investment Account for investment as it may determine, in accordance with rules and regulations adopted by the Fund by a seventy per cent majority of the total voting power. The rules and regulations adopted pursuant to this provision shall be consistent with (vii), (viii), and (ix) below.

(iv) The income of investment may be invested in accordance with the provisions of this subsection (f). Income not invested shall be held in the Investment Account or may be used for meeting the expenses of conducting the business of the Fund.

(v) The Fund may use a member's currency held in the Investment Account to obtain the currencies needed to meet the expenses of conducting the business of the Fund.

(vi) The Investment Account shall be terminated in the event of liquidation of the Fund and may be terminated, or the amount of the investment may be reduced, prior to liquidation of the Fund by a seventy per cent majority of the total voting power.

(vii) Upon termination of the Investment Account because of liquidation of the Fund, any assets in this account shall be distributed in accordance with the provisions of Schedule K, provided that a portion of these assets corresponding to the proportion of the assets transferred to this account under Article V, Section 12(g) to the total of the assets transferred to this account shall be deemed to be assets held in the Special Disbursement Account and shall be distributed in accordance with Schedule K, paragraph 2(a)(ii).

(viii) Upon termination of the Investment Account prior to liquidation of the Fund, a portion of the assets held in this account corresponding to the proportion of the assets transferred to this account under Article V, Section 12(g) to the total of the assets transferred to the account shall be transferred to the Special Disbursement Account if it has not been terminated, and the balance of the assets held in the Investment Account shall be transferred to the General Resources Account for immediate use in operations and transactions.

(ix) On a reduction of the amount of the investment by the Fund, a portion of the reduction corresponding to the proportion of the assets transferred to the Investment Account under Article V, Section 12(g) to the total of the assets transferred to this account shall be transferred to the Special Disbursement Account if it has not been terminated, and the balance of the reduction shall be transferred to the General Resources Account for immediate use in operations and transactions.

Section 7 Publication of Reports

(a) The Fund shall publish an annual report containing an audited statement of its accounts, and shall issue, at intervals of three months or less, a summary statement of its operations and transactions and its holdings of special drawing rights, gold, and currencies of members.
(b) The Fund may publish such other reports as it deems desirable for carrying out its purposes.

Section 8 Communication of Views to Members

The Fund shall at all times have the right to communicate its views informally to any member on any matter arising under this Agreement. The Fund may, by a seventy per cent majority of the total voting power, decide to publish a report made to a member regarding its monetary or economic conditions and developments which directly tend to produce a serious disequilibrium in the international balance of payments of members. If the member is not entitled to appoint an Executive Director, it shall be entitled to representation in accordance with Section 3(j) of this Article. The Fund shall not publish a report involving changes in the fundamental structure of the economic organization of members.

Article XIII: Offices and Depositories

Section 1 Location of Offices

The principal office of the Fund shall be located in the territory of the member having the largest quota, and agencies or branch offices may be established in the territories of other members.

Section 2 Depositories

(a) Each member shall designate its central bank as a depository for all the Fund's holdings of its currency, or if it has no central bank it shall designate such other institution as may be acceptable to the Fund.
(b) The Fund may hold other assets, including gold, in the depositories designated by the five members having the largest quotas and in such other designated depositories as the Fund may select. Initially, at least one-half of the holdings of the Fund shall be held in the depository designated by the member in whose territories the Fund has its principal office and at least forty per cent shall be held in the depositories designated by the remaining four members referred to above. However, all transfers of gold by the Fund shall be made with due regard

to the costs of transport and anticipated requirements of the Fund. In an emergency the Executive Board may transfer all or any part of the Fund's gold holdings to any place where they can be adequately protected.

Section 3 Guarantee of the Fund's Assets

Each member guarantees all assets of the Fund against loss resulting from failure or default on the part of the depository designated by it.

Article XIV: Transitional Arrangements

Section 1 Notification to the Fund

Each member shall notify the Fund whether it intends to avail itself of the transitional arrangements in Section 2 of this Article, or whether it is prepared to accept the obligations of Article VIII, Sections 2, 3, and 4. A member availing itself of the transitional arrangements shall notify the Fund as soon thereafter as it is prepared to accept these obligations.

Section 2 Exchange Restrictions

A member that has notified the Fund that it intends to avail itself of transitional arrangements under this provision may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund, and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the promotion of a stable system of exchange rates. In particular, members shall withdraw restrictions maintained under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the general resources of the Fund.

Section 3 Action of the Fund Relating to Restrictions

The Fund shall make annual reports on the restrictions in force under Section 2 of this Article. Any member retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4 shall consult the Fund annually as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other articles of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XXVI, Section 2(a).

Article XV: Special Drawing Rights

Section 1 Authority to Allocate Special Drawing Rights

(a) To meet the need, as and when it arises, for a supplement to existing reserve assets, the Fund is authorized to allocate special drawing rights in accordance with the provisions of Article XVIII to members that are participants in the Special Drawing Rights Department.
(b) In addition, the Fund shall allocate special drawing rights to members that are participants in the Special Drawing Rights Department in accordance with the provisions of Schedule M.

Section 2 Valuation of the Special Drawing Right

The method of valuation of the special drawing right shall be determined by the Fund by a seventy per cent majority of the total voting power, provided, however, that an eighty-five per cent majority of the total voting power shall be required for a change in the principle of valuation or a fundamental change in the application of the principle in effect.

Article XVI: General Department and Special Drawing Rights Department

Section 1 Separation of Operations and Transactions

All operations and transactions involving special drawing rights shall be conducted through the Special Drawing Rights Department. All other operations and transactions on the account of the Fund authorized by or under this Agreement shall be conducted through the General Department. Operations and transactions pursuant to Article XVII, Section 2 shall be conducted through the General Department as well as the Special Drawing Rights Department.

Section 2 Separation of Assets and Property

All assets and property of the Fund, except resources administered under Article V, Section 2(b), shall be held in the General Department, provided that assets and property acquired under Article XX, Section 2 and Articles XXIV and XXV and Schedules H and I shall be held in the Special Drawing Rights Department. Any assets or property held in one Department shall not be available to discharge or meet the liabilities, obligations, or losses of the Fund incurred in the conduct of the operations and transactions of the other Department, except that the expenses of conducting the business of the Special Drawing Rights Department shall be paid by the Fund from the General Department which shall be reimbursed in special drawing rights from time to time by assessments under Article XX, Section 4 made on the basis of a reasonable estimate of such expenses.

Section 3 Recording and Information

All changes in holdings of special drawing rights shall take effect only when recorded by the Fund in the Special Drawing Rights Department. Participants shall notify the Fund of the provisions of this Agreement under which special drawing rights are used. The Fund may require participants to furnish it with such other information as it deems necessary for its functions.

Article XVII: Participants and Other Holders of Special Drawing Rights

Section 1 Participants
Each member of the Fund that deposits with the Fund an instrument setting forth that it undertakes all the obligations of a participant in the Special Drawing Rights Department in accordance with its law and that it has taken all steps necessary to enable it to carry out all of these obligations shall become a participant in the Special Drawing Rights Department as of the date the instrument is deposited, except that no member shall become a participant before the provisions of this Agreement pertaining exclusively to the Special Drawing Rights Department have entered into force and instruments have been deposited under this Section by members that have at least seventy-five per cent of the total of quotas.

Section 2 Fund as a Holder

The Fund may hold special drawing rights in the General Resources Account and may accept and use them in operations and transactions conducted through the General Resources Account with participants in accordance with the provisions of this Agreement or with prescribed holders in accordance with the terms and conditions prescribed under Section 3 of this Article.

Section 3 Other Holders

The Fund may prescribe:

(i) as holders, non-members, members that are non-participants, institutions that perform functions of a central bank for more than one member, and other official entities;
(ii) the terms and conditions on which prescribed holders may be permitted to hold special drawing rights and may accept and use them in operations and transactions with participants and other prescribed holders; and
(iii) the terms and conditions on which participants and the Fund through the General Resources Account may enter into operations and transactions in special drawing rights with prescribed holders.

An eighty-five per cent majority of the total voting power shall be required for prescriptions under (i) above. The terms and conditions prescribed by the Fund shall be consistent with the provisions of this Agreement and the effective functioning of the Special Drawing Rights Department.

Article XVIII: Allocation and Cancellation of Special Drawing Rights

Section 1 Principles and Considerations Governing Allocation and Cancellation

(a) In all its decisions with respect to the allocation and cancellation of special drawing rights the Fund shall seek to meet the long-term global need, as and when it arises, to supplement existing reserve assets in such manner as will promote the attainment of its purposes and will avoid economic stagnation and deflation as well as excess demand and inflation in the world.

(b) The first decision to allocate special drawing rights shall take into account, as special considerations, a collective judgment that there is a global need to supplement reserves, and the attainment of a better balance of payments equilibrium, as well as the likelihood of a better working of the adjustment process in the future.

Section 2 Allocation and Cancellation

(a) Decisions of the Fund to allocate or cancel special drawing rights shall be made for basic periods which shall run consecutively and shall be five years in duration. The first basic period shall begin on the date of the first decision to allocate special drawing rights or such later date as may be specified in that decision. Any allocations or cancellations shall take place at yearly intervals.

(b) The rates at which allocations are to be made shall be expressed as percentages of quotas on the date of each decision to allocate. The rates at which special drawing rights are to be cancelled shall be expressed as percentages of net cumulative allocations of special drawing rights on the date of each decision to cancel. The percentages shall be the same for all participants.

(c) In its decision for any basic period the Fund may provide, notwithstanding (a) and (b) above, that:

   (i) the duration of the basic period shall be other than five years; or

   (ii) the allocations or cancellations shall take place at other than yearly intervals; or

   (iii) the basis for allocations or cancellations shall be the quotas or net cumulative allocations on dates other than the dates of decisions to allocate or cancel.

(d) A member that becomes a participant after a basic period starts shall receive allocations beginning with the next basic period in which allocations are made after it becomes a participant unless the Fund decides that the new participant shall start to receive allocations beginning with the next allocation after it becomes a participant. If the Fund decides that a member that becomes a participant during a basic period shall receive allocations during the remainder of that basic period and the participant was not a member on the dates established under (b) or (c) above, the Fund shall determine the basis on which these allocations to the participant shall be made.

(e) A participant shall receive allocations of special drawing rights made pursuant to any decision to allocate unless:

   (i) the Governor for the participant did not vote in favor of the decision; and

   (ii) the participant has notified the Fund in writing prior to the first allocation of special drawing rights under that decision that it does not wish special drawing rights to be allocated to it under the decision. On the request of a participant, the Fund may decide to terminate the effect of the notice with respect to allocations of special drawing rights subsequent to the termination.

(f) If on the effective date of any cancellation the amount of special drawing rights held by a participant is less than its share of the special drawing rights that are to be cancelled, the participant shall eliminate its negative balance as promptly as its gross reserve position permits and shall remain in consultation with the Fund for this purpose. Special drawing rights acquired by the participant after the effective date of the cancellation shall be applied against its negative balance and cancelled.

Section 3 Unexpected Major Developments

The Fund may change the rates or intervals of allocation or cancellation during the rest of a basic period or change the length of a basic period or start a new basic period, if at any time the Fund finds it desirable to do so because of unexpected major developments.

Section 4 Decisions on Allocations and Cancellations

(a) Decisions under Section 2(a), (b), and (c) or Section 3 of this Article shall be made by the Board of Governors on the basis of proposals of the Managing Director concurred in by the Executive Board.

(b) Before making any proposal, the Managing Director, after having satisfied himself that it will be consistent with the provisions of Section 1(a) of this Article, shall conduct such consultations as will enable him to ascertain that there is broad support among participants for the proposal. In addition, before making a proposal for the first allocation, the Managing Director shall satisfy himself that the provisions of Section 1(b) of this Article have been met and that there is broad support among participants to begin allocations; he shall make a proposal for the first allocation as soon after the establishment of the Special Drawing Rights Department as he is so satisfied.

(c) The Managing Director shall make proposals:

(i) not later than six months before the end of each basic period;

(ii) if no decision has been taken with respect to allocation or cancellation for a basic period, whenever he is satisfied that the provisions of (b) above have been met;

(iii) when, in accordance with Section 3 of this Article, he considers that it would be desirable to change the rate or intervals of allocation or cancellation or change the length of a basic period or start a new basic period; or

(iv) within six months of a request by the Board of Governors or the Executive Board;

provided that, if under (i), (iii), or (iv) above the Managing Director ascertains that there is no proposal which he considers to be consistent with the provisions of Section 1 of this Article that has broad support among participants in accordance with (b) above, he shall report to the Board of Governors and to the Executive Board.

(d) An eighty-five per cent majority of the total voting power shall be required for decisions under Section 2(a), (b), and (c) or Section 3 of this Article except for decisions under Section 3 with respect to a decrease in the rates of allocation.

Article XIX: Operations and Transactions in Special Drawing Rights

Section 1 Use of Special Drawing Rights

Special drawing rights may be used in the operations and transactions authorized by or under this Agreement.

Section 2 Operations and Transactions between Participants

(a) A participant shall be entitled to use its special drawing rights to obtain an equivalent amount of currency from a participant designated under Section 5 of this Article.

(b) A participant, in agreement with another participant, may use its special drawing rights to obtain an equivalent amount of currency from the other participant.

(c) The Fund, by a seventy per cent majority of the total voting power, may prescribe operations in which a participant is authorized to engage in agreement with another participant on such terms and conditions as the Fund deems appropriate. The terms and conditions shall be consistent with the effective functioning of the Special Drawing Rights Department and the proper use of special drawing rights in accordance with this Agreement.

(d) The Fund may make representations to a participant that enters into any operation or transaction under (b) or (c) above that in the judgment of the Fund may be prejudicial to the process of designation according to the principles of Section 5 of this Article or is otherwise inconsistent with Article XXII. A participant that persists in entering into such operations or transactions shall be subject to Article XXIII, Section 2(b).

Section 3 Requirement of Need

(a) In transactions under Section 2(a) of this Article, except as otherwise provided in (c) below, a participant will be expected to use its special drawing rights only if it has a need because of its balance of payments or its reserve position or developments in its reserves, and not for the sole purpose of changing the composition of its reserves.

(b) The use of special drawing rights shall not be subject to challenge on the basis of the expectation in (a) above, but the Fund may make representations to a participant that fails to fulfill this expectation. A participant that persists in failing to fulfill this expectation shall be subject to Article XXIII, Section 2(b).

(c) The Fund may waive the expectation in (a) above in any transactions in which a participant uses special drawing rights to obtain an equivalent amount of currency from a participant designated under Section 5 of this Article that would promote reconstitution by the other participant under Section 6(a) of this Article; prevent or reduce a negative balance of the other participant; or offset the effect of a failure by the other participant to fulfill the expectation in (a) above.

Section 4 Obligation to Provide Currency

(a) A participant designated by the Fund under Section 5 of this Article shall provide on demand a freely usable currency to a participant using special drawing rights under Section 2(a) of this Article. A participant's obligation to provide currency shall not extend beyond the point at which its holdings of special drawing rights in excess of its net cumulative allocation are equal to twice its net cumulative allocation or such higher limit as may be agreed between a participant and the Fund.
(b) A participant may provide currency in excess of the obligatory limit or any agreed higher limit.

Section 5 Designation of Participants to Provide Currency

(a) The Fund shall ensure that a participant will be able to use its special drawing rights by designating participants to provide currency for specified amounts of special drawing rights for the purposes of Sections 2(a) and 4 of this Article. Designations shall be made in accordance with the following general principles supplemented by such other principles as the Fund may adopt from time to time:
   (i) A participant shall be subject to designation if its balance of payments and gross reserve position is sufficiently strong, but this will not preclude the possibility that a participant with a strong reserve position will be designated even though it has a moderate balance of payments deficit. Participants shall be designated in such manner as will promote over time a balanced distribution of holdings of special drawing rights among them.
   (ii) Participants shall be subject to designation in order to promote reconstitution under Section 6(a) of this Article, to reduce negative balances in holdings of special drawing rights, or to offset the effect of failures to fulfill the expectation in Section 3(a) of this Article.
   (iii) In designating participants, the Fund normally shall give priority to those that need to acquire special drawing rights to meet the objectives of designation under (ii) above.
(b) In order to promote over time a balanced distribution of holdings of special drawing rights under (a)(i) above, the Fund shall apply the rules for designation in Schedule F or such rules as may be adopted under (c) below.

(c) The rules for designation may be reviewed at any time and new rules shall be adopted if necessary. Unless new rules are adopted, the rules in force at the time of the review shall continue to apply.

Section 6 Reconstitution

(a) Participants that use their special drawing rights shall reconstitute their holdings of them in accordance with the rules for reconstitution in Schedule G or such rules as may be adopted under (b) below.
(b) The rules for reconstitution may be reviewed at any time and new rules shall be adopted if necessary. Unless new rules are adopted or a decision is made to abrogate rules for reconstitution, the rules in force at the time of review shall continue to apply. A seventy per cent majority of the total voting power shall be required for decisions to adopt, modify, or abrogate the rules for reconstitution.

Section 7 Exchange Rates

(a) Except as otherwise provided in (b) below, the exchange rates for transactions between participants under Section 2(a) and (b) of this Article shall be such that participants using special drawing rights shall receive the same value whatever currencies might be provided and whichever participants provide those currencies, and the Fund shall adopt regulations to give effect to this principle.
(b) The Fund, by an eighty-five per cent majority of the total voting power, may adopt policies under which in exceptional circumstances the Fund, by a seventy per cent majority of the total voting power, may authorize participants entering into transactions under Section 2(b) of this Article to agree on exchange rates other than those applicable under (a) above.
(c) The Fund shall consult a participant on the procedure for determining rates of exchange for its currency.
(d) For the purpose of this provision the term participant includes a terminating participant.

Article XX: Special Drawing Rights Department Interest and Charges

Section 1 Interest

Interest at the same rate for all holders shall be paid by the Fund to each holder on the amount of its holdings of special drawing rights. The Fund shall pay the amount due to each holder whether or not sufficient charges are received to meet the payment of interest.

Section 2 Charges

Charges at the same rate for all participants shall be paid to the Fund by each participant on the amount of its net cumulative allocation of special drawing rights plus any negative balance of the participant or unpaid charges.

Section 3 Rate of Interest and Charges

The Fund shall determine the rate of interest by a seventy per cent majority of the total voting power. The rate of charges shall be equal to the rate of interest.

Section 4 Assessments

When it is decided under Article XVI, Section 2 that reimbursement shall be made, the Fund shall levy assessments for this purpose at the same rate for all participants on their net cumulative allocations.

Section 5 Payment of Interest, Charges, and Assessments

Interest, charges, and assessments shall be paid in special drawing rights. A participant that needs special drawing rights to pay any charge or assessment shall be obligated and entitled to obtain them, for currency acceptable to the Fund, in a transaction with the Fund conducted through the General Resources Account. If sufficient special drawing rights cannot be obtained in this way, the participant shall be obligated and entitled to obtain them with a freely usable currency from a participant which the Fund shall specify. Special drawing rights acquired by a participant after the date for payment shall be applied against its unpaid charges and cancelled.

Article XXI: Administration of the General Department and the Special Drawing Rights Department

(a) The General Department and the Special Drawing Rights Department shall be administered in accordance with the provisions of Article XII, subject to the following provisions:
  - (i) For meetings of or decisions by the Board of Governors on matters pertaining exclusively to the Special Drawing Rights Department only requests by, or the presence and the votes of, Governors appointed by members that are participants shall be counted for the purpose of calling meetings and determining whether a quorum exists or whether a decision is made by the required majority.
  - (ii) For decisions by the Executive Board on matters pertaining exclusively to the Special Drawing Rights Department only Executive Directors elected by at least one member that is a participant shall be entitled to vote. Each of these Executive Directors shall be entitled to cast the number of votes allotted to the members that are participants whose votes counted towards

his election. Only the presence of Executive Directors elected by members that are participants and the votes allotted to members that are participants shall be counted for the purpose of determining whether a quorum exists or whether a decision is made by the required majority.

(iii) Questions of the general administration of the Fund, including reimbursement under Article XVI, Section 2, and any question whether a matter pertains to both Departments or exclusively to the Special Drawing Rights Department shall be decided as if they pertained exclusively to the General Department. Decisions with respect to the method of valuation of the special drawing right, the acceptance and holding of special drawing rights in the General Resources Account of the General Department and the use of them, and other decisions affecting the operations and transactions conducted through both the General Resources Account of the General Department and the Special Drawing Rights Department shall be made by the majorities required for decisions on matters pertaining exclusively to each Department. A decision on a matter pertaining to the Special Drawing Rights Department shall so indicate.

(b) In addition to the privileges and immunities that are accorded under Article IX of this Agreement, no tax of any kind shall be levied on special drawing rights or on operations or transactions in special drawing rights.

(c) A question of interpretation of the provisions of this Agreement on matters pertaining exclusively to the Special Drawing Rights Department shall be submitted to the Executive Board pursuant to Article XXIX(a) only on the request of a participant. In any case where the Executive Board has given a decision on a question of interpretation pertaining exclusively to the Special Drawing Rights Department only a participant may require that the question be referred to the Board of Governors under Article XXIX(b). The Board of Governors shall decide whether a Governor appointed by a member that is not a participant shall be entitled to vote in the Committee on Interpretation on questions pertaining exclusively to the Special Drawing Rights Department.

(d) Whenever a disagreement arises between the Fund and a participant that has terminated its participation in the Special Drawing Rights Department or between the Fund and any participant during the liquidation of the Special Drawing Rights Department with respect to any matter arising exclusively from participation in the Special Drawing Rights Department, the disagreement shall be submitted to arbitration in accordance with the procedures in Article XXIX(c).

Article XXII: General Obligations of Participants

In addition to the obligations assumed with respect to special drawing rights under other articles of this Agreement, each participant undertakes to collaborate with the Fund and with other participants in order to facilitate the effective functioning of the Special Drawing Rights Department and the proper use of special drawing rights in accordance with this Agreement and with the objective of making the special drawing right the principal reserve asset in the international monetary system.

Article XXIII: Suspension of Operations and Transactions in Special Drawing Rights

Section 1 Emergency Provisions

In the event of an emergency or the development of unforeseen circumstances threatening the activities of the Fund with respect to the Special Drawing Rights Department, the Executive Board, by an eighty-five per cent majority of the total voting power, may suspend for a period of not more than one year the operation of any of the provisions relating to operations and transactions in special drawing rights, and the provisions of Article XXVII, Section l(b), (c), and (d) shall then apply.

Section 2 Failure to Fulfill Obligations

(a) If the Fund finds that a participant has failed to fulfill its obligations under Article XIX, Section 4, the right of the participant to use its special drawing rights shall be suspended unless the Fund otherwise decides.
(b) If the Fund finds that a participant has failed to fulfill any other obligation with respect to special drawing rights, the Fund may suspend the right of the participant to use special drawing rights it acquires after the suspension.
(c) Regulations shall be adopted to ensure that before action is taken against any participant under (a) or (b) above, the participant shall be informed immediately of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing. Whenever the participant is thus informed of a complaint relating to (a) above, it shall not use special drawing rights pending the disposition of the complaint.
(d) Suspension under (a) or (b) above or limitation under (c) above shall not affect a participant's obligation to provide currency in accordance with Article XIX, Section 4.
(e) The Fund may at any time terminate a suspension under (a) or (b) above, provided that a suspension imposed on a participant under (b) above for failure to fulfill the obligations under Article XIX, Section 6(a) shall not be terminated until one hundred eighty days after the end of the first calendar quarter during which the participant complies with the rules for reconstitution.
(f) The right of a participant to use its special drawing rights shall not be suspended because it has become ineligible to use the Fund's general resources under Article V, Section 5, Article VI, Section 1, or Article XXVI, Section 2(a). Article XXVI, Section 2 shall not apply because a participant has failed to fulfill any obligations with respect to special drawing rights.

Article XXIV: Termination of Participation

Section 1 Right to Terminate Participation

(a) Any participant may terminate its participation in the Special Drawing Rights Department at any time by transmitting a notice in writing to the Fund at its principal office. Termination shall become effective on the date the notice is received.
(b) A participant that withdraws from membership in the Fund shall be deemed to have simultaneously terminated its participation in the Special Drawing Rights Department.

Section 2 Settlement on Termination

(a) When a participant terminates its participation in the Special Drawing Rights Department, all operations and transactions by the terminating participant in special drawing rights shall cease except as otherwise permitted under an agreement made pursuant to (c) below in order to facilitate a settlement or as provided in Sections 3, 5, and 6 of this Article or in Schedule H. Interest and charges that accrued to the date of termination and assessments levied before that date but not paid shall be paid in special drawing rights.
(b) The Fund shall be obligated to redeem all special drawing rights held by the terminating participant, and the terminating participant shall be obligated to pay to the Fund an amount equal to its net cumulative allocation and any other amounts that may be due and payable because of its participation in the Special Drawing Rights Department. These obligations shall be set off against each other and the amount of special drawing rights held by the terminating participant that is used in the setoff to extinguish its obligation to the Fund shall be cancelled.
(c) A settlement shall be made with reasonable despatch by agreement between the terminating participant and the Fund with respect to any obligation of the terminating participant or the Fund after the setoff in (b) above. If agreement on a settlement is not reached promptly the provisions of Schedule H shall apply.

Section 3 Interest and Charges

After the date of termination the Fund shall pay interest on any outstanding balance of special drawing rights held by a terminating participant and the terminating participant shall pay charges on any outstanding obligation owed to the Fund at the times and rates prescribed under Article XX. Payment shall be made in special drawing rights. A terminating participant shall be entitled to obtain special drawing rights with a freely usable currency to pay charges or assessments in a transaction with a participant specified by the Fund or by agreement from any other holder, or to dispose of special drawing rights received as interest in a transaction with any participant designated under Article XIX, Section 5 or by agreement with any other holder.

Section 4 Settlement of Obligation to the Fund

Currency received by the Fund from a terminating participant shall be used by the Fund to redeem special drawing rights held by participants in proportion to the amount by which each participant's holdings of special drawing rights exceed its net cumulative allocation at the time the currency is received by the Fund. Special drawing rights so redeemed and special drawing rights obtained by a terminating participant under the provisions of this Agreement to meet any installment due under an agreement on settlement or under Schedule H and set off against that installment shall be cancelled.

Section 5 Settlement of Obligation to a Terminating Participant

Whenever the Fund is required to redeem special drawing rights held by a terminating participant, redemption shall be made with currency provided by participants specified by the Fund. These participants shall be specified in accordance with the principles in Article XIX, Section 5. Each specified participant shall provide at its option the currency of the terminating participant or a freely usable currency to the Fund and shall receive an equivalent amount of special drawing rights. However, a terminating participant may use its special drawing rights to obtain its own currency, a freely usable currency, or any other asset from any holder, if the Fund so permits.

Section 6 General Resources Account Transactions

In order to facilitate settlement with a terminating participant, the Fund may decide that a terminating participant shall:

(i) use any special drawing rights held by it after the setoff in Section 2(b) of this Article, when they are to be redeemed, in a transaction with the Fund conducted through the General Resources Account to obtain its own currency or a freely usable currency at the option of the Fund; or
(ii) obtain special drawing rights in a transaction with the Fund conducted through the General Resources Account for a currency acceptable to the Fund to meet any charges or installment due under an agreement or the provisions of Schedule H.

Article XXV: Liquidation of the Special Drawing Rights Department

(a) The Special Drawing Rights Department may not be liquidated except by decision of the Board of Governors. In an emergency, if the Executive Board decides that liquidation of the Special Drawing Rights Department may be necessary, it may temporarily suspend allocations or cancellations and all operations and transactions in special drawing rights pending decision by the Board of Governors. A decision by the Board of Governors to liquidate the Fund shall be a decision to liquidate both the General Department and the Special Drawing Rights Department.

(b) If the Board of Governors decides to liquidate the Special Drawing Rights Department, all allocations or cancellations and all operations and transactions in special drawing rights and the activities of the Fund with respect to the Special Drawing Rights Department shall cease except those incidental to the orderly discharge of the obligations of participants and of the Fund with respect to special drawing rights, and all obligations of the Fund and of participants under this Agreement with respect to special drawing rights shall cease except those set out in this Article, Article XX, Article XXI(d), Article XXIV, Article XXIX(c), and Schedule H, or any agreement reached under Article XXIV subject to paragraph 4 of Schedule H, and Schedule I.

(c) Upon liquidation of the Special Drawing Rights Department, interest and charges that accrued to the date of liquidation and assessments levied before that date but not paid shall be paid in special drawing rights. The Fund shall be obligated to redeem all special drawing rights held by holders, and each participant shall be obligated to pay the Fund an amount equal to its net cumulative allocation of special drawing rights and such other amounts as may be due and payable because of its participation in the Special Drawing Rights Department.

(d) Liquidation of the Special Drawing Rights Department shall be administered in accordance with the provisions of Schedule I.

Article XXVI: Withdrawal from Membership

Section 1 Right of Members to Withdraw

Any member may withdraw from the Fund at any time by transmitting a notice in writing to the Fund at its principal office. Withdrawal shall become effective on the date such notice is received.

Section 2 Compulsory Withdrawal

(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article V, Section 5 or Article VI, Section 1.

(b) If, after the expiration of a reasonable period following a declaration of ineligibility under (a) above, the member persists in its failure to fulfill any of its obligations under this Agreement, the Fund may, by a seventy per cent majority of the total voting power, suspend the voting rights of the member. During the period of the suspension, the provisions of Schedule L shall apply. The Fund may, by a seventy per cent majority of the total voting power, terminate the suspension at any time.

(c) If, after the expiration of a reasonable period following a decision of suspension under (b) above, the member persists in its failure to fulfill any of its obligations under this Agreement, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the Governors having eighty-five per cent of the total voting power.

(d) Regulations shall be adopted to ensure that before action is taken against any member under (a), (b), or (c) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing.

Section 3 Settlement of Accounts with Members Withdrawing

When a member withdraws from the Fund, normal operations and transactions of the Fund in its currency shall cease and settlement of all accounts between it and the Fund shall be made with reasonable despatch by agreement between it and the Fund. If agreement is not reached promptly, the provisions of Schedule J shall apply to the settlement of accounts.

Article XXVII: Emergency Provisions

Section 1 Temporary Suspension

(a) In the event of an emergency or the development of unforeseen circumstances threatening the activities of the Fund, the Executive Board, by an eighty-five per cent majority of the total voting power, may suspend for a period of not more than one year the operation of any of the following provisions:
   (i) Article V, Sections 2, 3, 7, 8(a)(i) and (e);
   (ii) Article VI, Section 2;
   (iii) Article XI, Section 1;
   (iv) Schedule C, paragraph 5.

(b) A suspension of the operation of a provision under (a) above may not be extended beyond one year except by the Board of Governors which, by an eighty-five per cent majority of the total voting power, may extend a suspension for an additional period of not more than two years if it finds that the emergency or unforeseen circumstances referred to in (a) above continue to exist.

(c) The Executive Board may, by a majority of the total voting power, terminate such suspension at any time.

(d) The Fund may adopt rules with respect to the subject matter of a provision during the period in which its operation is suspended.

Section 2 Liquidation of the Fund

(a) The Fund may not be liquidated except by decision of the Board of Governors. In an emergency, if the Executive Board decides that liquidation of the Fund may be necessary, it may temporarily suspend all operations and transactions, pending decision by the Board of Governors.

(b) If the Board of Governors decides to liquidate the Fund, the Fund shall forthwith cease to engage in any activities except those incidental to the orderly collection and liquidation of its assets and the settlement of its liabilities, and all obligations of members under this Agreement shall cease except those set out in this Article, in Article XXIX(c), in Schedule J, paragraph 7, and in Schedule K.

(c) Liquidation shall be administered in accordance with the provisions of Schedule K.

Article XXVIII: Amendments

(a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a Governor, or the Executive Board, shall be communicated to the chairman of the Board of Governors who shall bring the proposal before the Board of Governors. If the proposed amendment is approved by the Board of Governors, the Fund shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five per cent of the total voting power, have accepted the proposed amendment, the Fund shall certify the fact by a formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying:
   (i) the right to withdraw from the Fund (Article XXVI, Section 1);
   (ii) the provision that no change in a member's quota shall be made without its consent (Article III, Section 2 (d)); and
   (iii) the provision that no change may be made in the par value of a member's currency except on the proposal of that member (Schedule C, paragraph 6).

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

Article XXIX: Interpretation

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Board for its decision. If the question particularly affects any member, it shall be entitled to representation in accordance with Article XII, Section 3(j).

(b) In any case where the Executive Board has given a decision under (a) above, any member may require, within three months from the date of the decision, that the question be referred to the Board of Governors, whose decision shall be final. Any question referred to the Board of Governors shall be considered by a Committee on Interpretation of the Board of Governors. Each Committee member shall have one vote. The Board of Governors shall establish the membership, procedures, and voting majorities of the Committee. A decision of the Committee shall be the decision of the Board of Governors unless the Board of Governors, by an eighty-five per cent majority of the total voting power, decides otherwise. Pending the result of the reference to the Board of Governors the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Board.

(c) Whenever a disagreement arises between the Fund and a member which has withdrawn, or between the Fund and any member during liquidation of the Fund, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Fund, another by the member or withdrawing member, and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the International Court of Justice or such other authority as may have been prescribed by regulation adopted by the Fund. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

Article XXX: Explanation of Terms

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following provisions:

(a) The Fund's holdings of a member's currency in the General Resources Account shall include any securities accepted by the Fund under Article III, Section 4.

(b) Stand-by arrangement means a decision of the Fund by which a member is assured that it will be able to make purchases from the General Resources Account in accordance with the terms of the decision during a specified period and up to a specified amount.

(c) Reserve tranche purchase means a purchase by a member of special drawing rights or the currency of another member in exchange for its own currency which does not cause the Fund's holdings of the member's currency in the General Resources Account to exceed its quota, provided that for the purposes of this definition the Fund may exclude purchases and holdings under:

  (i) policies on the use of its general resources for compensatory financing of export fluctuations;

  (ii) policies on the use of its general resources in connection with the financing of contributions to international buffer stocks of primary products; and

  (iii) other policies on the use of its general resources in respect of which the Fund decides, by an eighty-five per cent majority of the total voting power, that an exclusion shall be made.

(d) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

  (1) all payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;

  (2) payments due as interest on loans and as net income from other investments;

  (3) payments of moderate amount for amortization of loans or for depreciation of direct investments; and

  (4) moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

(e) Net cumulative allocation of special drawing rights means the total amount of special drawing rights allocated to a participant less its share of special drawing rights that have been cancelled under Article XVIII, Section 2(a).

(f) A freely usable currency means a member's currency that the Fund determines (i) is, in fact, widely used to make payments for international transactions, and (ii) is widely traded in the principal exchange markets.

(g) Members that were members on August 31, 1975 shall be deemed to include a member that accepted membership after that date pursuant to a resolution of the Board of Governors adopted before that date.

(h) Transactions of the Fund means exchanges of monetary assets by the Fund for other monetary assets. Operations of the Fund means other uses or receipts of monetary assets by the Fund.

(i) Transactions in special drawing rights means exchanges of special drawing rights for other monetary assets. Operations in special drawing rights means other uses of special drawing rights.

Article XXXI: Final Provisions

Section 1 Entry into Force

This Agreement shall enter into force when it has been signed on behalf of governments having sixty-five per cent of the total of the quotas set forth in Schedule A and when the instruments referred to in Section 2(a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

Section 2 Signature

(a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

(b) Each country shall become a member of the Fund as from the date of the deposit on its behalf of the instrument referred to in (a) above, except that no country shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and the governments of all countries whose membership is approved in accordance with Article II, Section 2, of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.

(d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one per cent of its total subscription in gold or United States dollars for the purpose of meeting administrative expenses of the Fund. The Government of the

United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Fund when the initial meeting has been called. If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.

(e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.

(f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 2.

(g) By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority, and all territories in respect of which they exercise a mandate.

(h) Subsection (d) above shall come into force with regard to each signatory government as from the date of its signature.

[The signature and depositary clause reproduced below followed the text of Article XX in the original Articles of Agreement]

Done at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 2.

SCHEDULES

SCHEDULE A [Omitted]

SCHEDULE B: Transitional Provisions with Respect to Repurchase, Payment of Additional Subscriptions, Gold, and Certain Operational Matters

1. Repurchase obligations that have accrued pursuant to Article V, Section 7(b) before the date of the second amendment of this Agreement and that remain undischarged at that date shall be discharged not later than the date or dates at which the obligations had to be discharged in accordance with the provisions of this Agreement before the second amendment.
2. A member shall discharge with special drawing rights any obligation to pay gold to the Fund in repurchase or as a subscription that is outstanding at the date of the second amendment of this Agreement, but the Fund may prescribe that these payments may be made in whole or in part in the currencies of other members specified by the Fund. A non-participant shall discharge an obligation that must be paid in special drawing rights pursuant to this provision with the currencies of other members specified by the Fund.
3. For the purposes of 2 above 0.888 671 gram of fine gold shall be equivalent to one special drawing right, and the amount of currency payable under 2 above shall

be determined on that basis and on the basis of the value of the currency in terms of the special drawing right at the date of discharge.
4. A member's currency held by the Fund in excess of seventy-five per cent of the member's quota at the date of the second amendment of this Agreement and not subject to repurchase under 1 above shall be repurchased in accordance with the following rules:

(i) Holdings that resulted from a purchase shall be repurchased in accordance with the policy on the use of the Fund's general resources under which the purchase was made.
(ii) Other holdings shall be repurchased not later than four years after the date of the second amendment of this Agreement.

5. Repurchases under 1 above that are not subject to 2 above, repurchases under 4 above, and any specification of currencies under 2 above shall be in accordance with Article V, Section 7(i).
6. All rules and regulations, rates, procedures, and decisions in effect at the date of the second amendment of this Agreement shall remain in effect until they are changed in accordance with the provisions of this Agreement.
7. To the extent that arrangements equivalent in effect to (a) and (b) below have not been completed before the date of the second amendment of this Agreement, the Fund shall

(a) sell up to 25 million ounces of fine gold held by it on August 31, 1975 to those members that were members on that date and that agree to buy it, in proportion to their quotas on that date. The sale to a member under this sub-paragraph (a) shall be made in exchange for its currency and at a price equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold, and
(b) sell up to 25 million ounces of fine gold held by it on August 31, 1975 for the benefit of developing members that were members on that date, provided, however, that the part of any profits or surplus value of the gold that corresponds to the proportion of such a member's quota on August 31, 1975 to the total of the quotas of all members on that date shall be transferred directly to each such member. The requirements under Article V, Section 12(c) that the Fund consult a member, obtain a member's concurrence, or exchange a member's currency for the currencies of other members in certain circumstances shall apply with respect to currency received by the Fund as a result of sales of gold under this provision, other than sales to a member in return for its own currency, and placed in the General Resources Account.

Upon the sale of gold under this paragraph 7, an amount of the proceeds in the currencies received equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold shall be placed in the General Resources Account and other assets held by the Fund under arrangements pursuant to (b) above shall be held separately from the general resources of the Fund. Assets that remain subject to disposition by the Fund upon termination of arrangements pursuant to (b) above shall be transferred to the Special Disbursement Account.

SCHEDULE C: Par Values

1. The Fund shall notify members that par values may be established for the purposes of this Agreement, in accordance with Article IV, Sections 1, 3, 4, and 5 and this Schedule, in terms of the special drawing right, or in terms of such other common denominator as is prescribed by the Fund. The common denominator shall not be gold or a currency.
2. A member that intends to establish a par value for its currency shall propose a par value to the Fund within a reasonable time after notice is given under 1 above.
3. Any member that does not intend to establish a par value for its currency under 1 above shall consult with the Fund and ensure that its exchange arrangements are consistent with the purposes of the Fund and are adequate to fulfill its obligations under Article IV, Section 1.
4. The Fund shall concur in or object to a proposed par value within a reasonable period after receipt of the proposal. A proposed par value shall not take effect for the purposes of this Agreement if the Fund objects to it, and the member shall be subject to 3 above. The Fund shall not object because of the domestic social or political policies of the member proposing the par value.
5. Each member that has a par value for its currency undertakes to apply appropriate measures consistent with this Agreement in order to ensure that the maximum and the minimum rates for spot exchange transactions taking place within its territories between its currency and the currencies of other members maintaining par values shall not differ from parity by more than four and one-half per cent or by such other margin or margins as the Fund may adopt by an eighty-five per cent majority of the total voting power.
6. A member shall not propose a change in the par value of its currency except to correct, or prevent the emergence of, a fundamental disequilibrium. A change may be made only on the proposal of the member and only after consultation with the Fund.
7. When a change is proposed, the Fund shall concur in or object to the proposed par value within a reasonable period after receipt of the proposal. The Fund shall concur if it is satisfied that the change is necessary to correct, or prevent the emergence of, a fundamental disequilibrium. The Fund shall not object because of the domestic social or political policies of the member proposing the change. A proposed change in par value shall not take effect for the purposes of this Agreement if the Fund objects to it. If a member changes the par value of its currency despite the objection of the Fund, the member shall be subject to Article XXVI, Section 2. Maintenance of an unrealistic par value by a member shall be discouraged by the Fund.
8. The par value of a member's currency established under this Agreement shall cease to exist for the purposes of this Agreement if the member informs the Fund that it intends to terminate the par value. The Fund may object to the termination of a par value by a decision taken by an eighty-five per cent majority of the total voting power. If a member terminates a par value for its currency despite the objection

of the Fund, the member shall be subject to Article XXVI, Section 2. A par value established under this Agreement shall cease to exist for the purposes of this Agreement if the member terminates the par value despite the objection of the Fund, or if the Fund finds that the member does not maintain rates for a substantial volume of exchange transactions in accordance with 5 above, provided that the Fund may not make such finding unless it has consulted the member and given it sixty days notice of the Fund's intention to consider whether to make a finding.
9. If the par value of the currency of a member has ceased to exist under 8 above, the member shall consult with the Fund and ensure that its exchange arrangements are consistent with the purposes of the Fund and are adequate to fulfill its obligations under Article IV, Section 1.
10. A member for whose currency the par value has ceased to exist under 8 above may, at any time, propose a new par value for its currency.
11. Notwithstanding 6 above, the Fund, by a seventy per cent majority of the total voting power, may make uniform proportionate changes in all par values if the special drawing right is the common denominator and the changes will not affect the value of the special drawing right. The par value of a member's currency shall, however, not be changed under this provision if, within seven days after the Fund's action, the member informs the Fund that it does not wish the par value of its currency to be changed by such action.

SCHEDULE D: Council

1.
   (a) Each member or group of members that has the number of votes allotted to it or them cast by an Executive Director shall appoint to the Council one Councillor, who shall be a Governor, Minister in the government of a member, or person of comparable rank, and may appoint not more than seven Associates. The Board of Governors may change, by an eighty-five per cent majority of the total voting power, the number of Associates who may be appointed. A Councillor or Associate shall serve until a new appointment is made or until the next regular election of Executive Directors, whichever shall occur sooner.
   (b) Executive Directors, or in their absence their Alternates, and Associates shall be entitled to attend meetings of the Council, unless the Council decides to hold a restricted session. Each member and each group of members that appoints a Councillor shall appoint an Alternate who shall be entitled to attend a meeting of the Council when the Councillor is not present, and shall have full power to act for the Councillor.
2.
   (a) The Council shall supervise the management and adaptation of the international monetary system, including the continuing operation of the adjustment process and developments in global liquidity, and in this connection shall review developments in the transfer of real resources to developing countries.
   (b) The Council shall consider proposals pursuant to Article XXVIII(a) to amend the Articles of Agreement.

3.

(a) The Board of Governors may delegate to the Council authority to exercise any powers of the Board of Governors except the powers conferred directly by this Agreement on the Board of Governors.

(b) Each Councillor shall be entitled to cast the number of votes allotted under Article XII, Section 5 to the member or group of members appointing him. A Councillor appointed by a group of members may cast separately the votes allotted to each member in the group. If the number of votes allotted to a member cannot be cast by an Executive Director, the member may make arrangements with a Councillor for casting the number of votes allotted to the member.

(c) The Council shall not take any action pursuant to powers delegated by the Board of Governors that is inconsistent with any action taken by the Board of Governors and the Executive Board shall not take any action pursuant to powers delegated by the Board of Governors that is inconsistent with any action taken by either the Board of Governors or the Council.

4.

The Council shall select a Councillor as chairman, shall adopt regulations as may be necessary or appropriate to perform its functions, and shall determine any aspect of its procedure. The Council shall hold such meetings as may be provided for by the Council or called by the Executive Board.

5.

(a) The Council shall have powers corresponding to those of the Executive Board under the following provisions: Article XII, Section 2(c), (f), (g), and (j); Article XVIII, Section 4(a) and Section 4(c)(iv); Article XXIII, Section 1; and Article XXVII, Section l(a).

(b) For decisions by the Council on matters pertaining exclusively to the Special Drawing Rights Department only Councillors appointed by a member that is a participant or a group of members at least one member of which is a participant shall be entitled to vote. Each of these Councillors shall be entitled to cast the number of votes allotted to the member which is a participant that appointed him or to the members that are participants in the group of members that appointed him, and may cast the votes allotted to a participant with which arrangements have been made pursuant to the last sentence of 3(b) above.

(c) The Council may by regulation establish a procedure whereby the Executive Board may obtain a vote of the Councillors on a specific question without a meeting of the Council when in the judgment of the Executive Board an action must be taken by the Council which should not be postponed until the next meeting of the Council and which does not warrant the calling of a special meeting.

(d) Article IX, Section 8 shall apply to Councillors, their Alternates, and Associates, and to any other person entitled to attend a meeting of the Council.

(e) When an Executive Director is entitled to cast the number of votes allotted to a member pursuant to Article XII, Section 3(i)(iii), the Councillor appointed by the group whose members elected such Executive Director shall be entitled to vote and cast the number of votes allotted to such member. The member shall be deemed to have participated in the appointment of the Councillor entitled to vote and cast the number of votes allotted to the member.

6.

The first sentence of Article XII, Section 2(a) shall be deemed to include a reference to the Council.

SCHEDULE E: Transitional Provisions with Respect to Executive Directors

1. Upon the entry into force of this Schedule:

(a) Each Executive Director who was appointed pursuant to former Article XII, Sections 3(*b*)(i) or 3(*c*), and was in office immediately prior to the entry into force of this Schedule, shall be deemed to have been elected by the member who appointed him; and
(b) Each Executive Director who cast the number of votes of a member pursuant to former Article XII, Section 3(i)(ii) immediately prior to the entry into force of this Schedule, shall be deemed to have been elected by such a member.

SCHEDULE F: Designation

During the first basic period the rules for designation shall be as follows:

(a) Participants subject to designation under Article XIX, Section 5(a)(i) shall be designated for such amounts as will promote over time equality in the ratios of the participants' holdings of special drawing rights in excess of their net cumulative allocations to their official holdings of gold and foreign exchange.
(b) The formula to give effect to (a) above shall be such that participants subject to designation shall be designated:
    (i) in proportion to their official holdings of gold and foreign exchange when the ratios described in (a) above are equal; and
    (ii) in such manner as gradually to reduce the difference between the ratios described in (a) above that are low and the ratios that are high.

SCHEDULE G: Reconstitution

1. During the first basic period the rules for reconstitution shall be as follows:

(a)
    (i) A participant shall so use and reconstitute its holdings of special drawing rights that, five years after the first allocation and at the end of each calendar quarter thereafter, the average of its total daily holdings of special drawing rights over the most recent five-year period will be not less than thirty per cent of the average of its daily net cumulative allocation of special drawing rights over the same period.

(ii) Two years after the first allocation and at the end of each calendar month thereafter the Fund shall make calculations for each participant so as to ascertain whether and to what extent the participant would need to acquire special drawing rights between the date of the calculation and the end of any five-year period in order to comply with the requirement in (a)(i) above. The Fund shall adopt regulations with respect to the bases on which these calculations shall be made and with respect to the timing of the designation of participants under Article XIX, Section 5(a)(ii), in order to assist them to comply with the requirement in (a)(i) above.

(iii) The Fund shall give special notice to a participant when the calculations under (a)(ii) above indicate that it is unlikely that the participant will be able to comply with the requirement in (a)(i) above unless it ceases to use special drawing rights for the rest of the period for which the calculation was made under (a)(ii) above.

(iv) A participant that needs to acquire special drawing rights to fulfill this obligation shall be obligated and entitled to obtain them, for currency acceptable to the Fund, in a transaction with the Fund conducted through the General Resources Account. If sufficient special drawing rights to fulfill this obligation cannot be obtained in this way, the participant shall be obligated and entitled to obtain them with a freely usable currency from a participant which the Fund shall specify.

(b) Participants shall also pay due regard to the desirability of pursuing over time a balanced relationship between their holdings of special drawing rights and their other reserves.

2. If a participant fails to comply with the rules for reconstitution, the Fund shall determine whether or not the circumstances justify suspension under Article XXIII, Section 2(b).

SCHEDULE H: Termination of Participation

1. If the obligation remaining after the setoff under Article XXIV, Section 2(b) is to the terminating participant and agreement on settlement between the Fund and the terminating participant is not reached within six months of the date of termination, the Fund shall redeem this balance of special drawing rights in equal half-yearly installments within a maximum of five years of the date of termination. The Fund shall redeem this balance as it may determine, either (a) by the payment to the terminating participant of the amounts provided by the remaining participants to the Fund in accordance with Article XXIV, Section 5, or (b) by permitting the terminating participant to use its special drawing rights to obtain its own currency or a freely usable currency from a participant specified by the Fund, the General Resources Account, or any other holder.

2. If the obligation remaining after the setoff under Article XXIV, Section 2(b) is to the Fund and agreement on settlement is not reached within six months of the date of termination, the terminating participant shall discharge this obligation in equal half-yearly installments within three years of the date of termination or within such longer period as may be fixed by the Fund. The terminating participant shall discharge this obligation, as the Fund may determine, either (a) by the payment to the

Fund of a freely usable currency, or (b) by obtaining special drawing rights, in accordance with Article XXIV, Section 6, from the General Resources Account or in agreement with a participant specified by the Fund or from any other holder, and the setoff of these special drawing rights against the installment due.
3. Installments under either 1 or 2 above shall fall due six months after the date of termination and at intervals of six months thereafter.
4. In the event of the Special Drawing Rights Department going into liquidation under Article XXV within six months of the date a participant terminates its participation, the settlement between the Fund and that government shall be made in accordance with Article XXV and Schedule I.

SCHEDULE I: Administration of Liquidation of the Special Drawing Rights Department

1. In the event of liquidation of the Special Drawing Rights Department, participants shall discharge their obligations to the Fund in ten half-yearly installments, or in such longer period as the Fund may decide is needed, in a freely usable currency and the currencies of participants holding special drawing rights to be redeemed in any installment to the extent of such redemption, as determined by the Fund. The first half-yearly payment shall be made six months after the decision to liquidate the Special Drawing Rights Department.
2. If it is decided to liquidate the Fund within six months of the date of the decision to liquidate the Special Drawing Rights Department, the liquidation of the Special Drawing Rights Department shall not proceed until special drawing rights held in the General Resources Account have been distributed in accordance with the following rule:

> After the distributions made under 2(a) and (b) of Schedule K, the Fund shall apportion its special drawing rights held in the General Resources Account among all members that are participants in proportion to the amounts due to each participant after the distribution under 2(b). To determine the amount due to each member for the purpose of apportioning the remainder of its holdings of each currency under 2(d) of Schedule K, the Fund shall deduct the distribution of special drawing rights made under this rule.

3. With the amounts received under 1 above, the Fund shall redeem special drawing rights held by holders in the following manner and order:

(a) Special drawing rights held by governments that have terminated their participation more than six months before the date the Board of Governors decides to liquidate the Special Drawing Rights Department shall be redeemed in accordance with the terms of any agreement under Article XXIV or Schedule H.
(b) Special drawing rights held by holders that are not participants shall be redeemed before those held by participants, and shall be redeemed in proportion to the amount held by each holder.
(c) The Fund shall determine the proportion of special drawing rights held by each participant in relation to its net cumulative allocation. The Fund shall first redeem special drawing rights from the participants with the highest proportion

until this proportion is reduced to that of the second highest proportion; the Fund shall then redeem the special drawing rights held by these participants in accordance with their net cumulative allocations until the proportions are reduced to that of the third highest proportion; and this process shall be continued until the amount available for redemption is exhausted.

4. Any amount that a participant will be entitled to receive in redemption under 3 above shall be set off against any amount to be paid under 1 above.
5. During liquidation the Fund shall pay interest on the amount of special drawing rights held by holders, and each participant shall pay charges on the net cumulative allocation of special drawing rights to it less the amount of any payments made in accordance with 1 above. The rates of interest and charges and the time of payment shall be determined by the Fund. Payments of interest and charges shall be made in special drawing rights to the extent possible. A participant that does not hold sufficient special drawing rights to meet any charges shall make the payment with a currency specified by the Fund. Special drawing rights received as charges in amounts needed for administrative expenses shall not be used for the payment of interest, but shall be transferred to the Fund and shall be redeemed first and with the currencies used by the Fund to meet its expenses.
6. While a participant is in default with respect to any payment required by 1 or 5 above, no amounts shall be paid to it in accordance with 3 or 5 above.
7. If after the final payments have been made to participants each participant not in default does not hold special drawing rights in the same proportion to its net cumulative allocation, those participants holding a lower proportion shall purchase from those holding a higher proportion such amounts in accordance with arrangements made by the Fund as will make the proportion of their holdings of special drawing rights the same. Each participant in default shall pay to the Fund its own currency in an amount equal to its default. The Fund shall apportion this currency and residual claims among participants in proportion to the amount of special drawing rights held by each and these special drawing rights shall be cancelled. The Fund shall then close the books of the Special Drawing Rights Department and all of the Fund's liabilities arising from the allocations of special drawing rights and the administration of the Special Drawing Rights Department shall cease.
8. Each participant whose currency is distributed to other participants under this Schedule guarantees the unrestricted use of such currency at all times for the purchase of goods or for payments of sums due to it or to persons in its territories. Each participant so obligated agrees to compensate other participants for any loss resulting from the difference between the value at which the Fund distributed its currency under this Schedule and the value realized by such participants on disposal of its currency.

SCHEDULE J: Settlement of Accounts with Members Withdrawing

1. The settlement of accounts with respect to the General Resources Account shall be made according to 1 to 6 of this Schedule. The Fund shall be obligated to pay to a member withdrawing an amount equal to its quota, plus any other amounts due to it from the Fund, less any amounts due to the Fund, including charges accruing after the date of its withdrawal; but no payment shall be made until six months after the

date of withdrawal. Payments shall be made in the currency of the withdrawing member, and for this purpose the Fund may transfer to the General Resources Account holdings of the member's currency in the Special Disbursement Account or in the Investment Account in exchange for an equivalent amount of the currencies of other members in the General Resources Account selected by the Fund with their concurrence.

2. If the Fund's holdings of the currency of the withdrawing member are not sufficient to pay the net amount due from the Fund, the balance shall be paid in a freely usable currency, or in such other manner as may be agreed. If the Fund and the withdrawing member do not reach agreement within six months of the date of withdrawal, the currency in question held by the Fund shall be paid forthwith to the withdrawing member. Any balance due shall be paid in ten half-yearly installments during the ensuing five years. Each such installment shall be paid, at the option of the Fund, either in the currency of the withdrawing member acquired after its withdrawal or in a freely usable currency.

3. If the Fund fails to meet any installment which is due in accordance with the preceding paragraphs, the withdrawing member shall be entitled to require the Fund to pay the installment in any currency held by the Fund with the exception of any currency which has been declared scarce under Article VII, Section 3.

4. If the Fund's holdings of the currency of a withdrawing member exceed the amount due to it, and if agreement on the method of settling accounts is not reached within six months of the date of withdrawal, the former member shall be obligated to redeem such excess currency in a freely usable currency. Redemption shall be made at the rates at which the Fund would sell such currencies at the time of withdrawal from the Fund. The withdrawing member shall complete redemption within five years of the date of withdrawal, or within such longer period as may be fixed by the Fund, but shall not be required to redeem in any half-yearly period more than one-tenth of the Fund's excess holdings of its currency at the date of withdrawal plus further acquisitions of the currency during such half-yearly period. If the withdrawing member does not fulfill this obligation, the Fund may in an orderly manner liquidate in any market the amount of currency which should have been redeemed.

5. Any member desiring to obtain the currency of a member which has withdrawn shall acquire it by purchase from the Fund, to the extent that such member has access to the general resources of the Fund and that such currency is available under 4 above.

6. The withdrawing member guarantees the unrestricted use at all times of the currency disposed of under 4 and 5 above for the purchase of goods or for payment of sums due to it or to persons within its territories. It shall compensate the Fund for any loss resulting from the difference between the value of its currency in terms of the special drawing right on the date of withdrawal and the value realized in terms of the special drawing right by the Fund on disposal under 4 and 5 above.

7. If the withdrawing member is indebted to the Fund as the result of transactions conducted through the Special Disbursement Account under Article V, Section 12(f)(ii), the indebtedness shall be discharged in accordance with the terms of the indebtedness.

8. If the Fund holds the withdrawing member's currency in the Special Disbursement Account or in the Investment Account, the Fund may in an orderly manner

exchange in any market for the currencies of members the amount of the currency of the withdrawing member remaining in each account after use under 1 above, and the proceeds of the exchange of the amount in each account shall be kept in that account. Paragraph 5 above and the first sentence of 6 above shall apply to the withdrawing member's currency.
9. If the Fund holds obligations of the withdrawing member in the Special Disbursement Account pursuant to Article V, Section 12(h), or in the Investment Account, the Fund may hold them until the date of maturity or dispose of them sooner. Paragraph 8 above shall apply to the proceeds of such disinvestment.
10. In the event of the Fund going into liquidation under Article XXVII, Section 2 within six months of the date on which the member withdraws, the accounts between the Fund and that government shall be settled in accordance with Article XXVII, Section 2 and Schedule K.

SCHEDULE K: Administration of Liquidation [Omitted]

1. In the event of liquidation the liabilities of the Fund other than the repayment of subscriptions shall have priority in the distribution of the assets of the Fund. In meeting each such liability the Fund shall use its assets in the following order:

(a) the currency in which the liability is payable;
(b) gold;
(c) all other currencies in proportion, so far as may be practicable, to the quotas of the members.

2. After the discharge of the Fund's liabilities in accordance with 1 above, the balance of the Fund's assets shall be distributed and apportioned as follows:

(a)
  (i) The Fund shall calculate the value of gold held on August 31, 1975 that it continues to hold on the date of the decision to liquidate. The calculation shall be made in accordance with 9 below and also on the basis of one special drawing right per 0.888 671 gram of fine gold on the date of liquidation. Gold equivalent to the excess of the former value over the latter shall be distributed to those members that were members on August 31, 1975 in proportion to their quotas on that date.
  (ii) The Fund shall distribute any assets held in the Special Disbursement Account on the date of the decision to liquidate to those members that were members on August 31, 1975 in proportion to their quotas on that date. Each type of asset shall be distributed proportionately to members.
(b) The Fund shall distribute its remaining holdings of gold among the members whose currencies are held by the Fund in amounts less than their quotas in the proportions, but not in excess of, the amounts by which their quotas exceed the Fund's holdings of their currencies.
(c) The Fund shall distribute to each member one-half the Fund's holdings of its currency but such distribution shall not exceed fifty per cent of its quota.
(d) The Fund shall apportion the remainder of its holdings of gold and each currency

(i) among all members in proportion to, but not in excess of, the amounts due to each member after the distributions under (b) and (c) above, provided that distribution under 2(a) above shall not be taken into account for determining the amounts due, and
(ii) any excess holdings of gold and currency among all the members in proportion to their quotas.

3. Each member shall redeem the holdings of its currency apportioned to other members under 2(d) above, and shall agree with the Fund within three months after a decision to liquidate upon an orderly procedure for such redemption.
4. If a member has not reached agreement with the Fund within the three-month period referred to in 3 above, the Fund shall use the currencies of other members apportioned to that member under 2(d) above to redeem the currency of that member apportioned to other members. Each currency apportioned to a member which has not reached agreement shall be used, so far as possible, to redeem its currency apportioned to the members which have made agreements with the Fund under 3 above.
5. If a member has reached agreement with the Fund in accordance with 3 above, the Fund shall use the currencies of other members apportioned to that member under 2(d) above to redeem the currency of that member apportioned to other members which have made agreements with the Fund under 3 above. Each amount so redeemed shall be redeemed in the currency of the member to which it was apportioned.
6. After carrying out the steps in the preceding paragraphs, the Fund shall pay to each member the remaining currencies held for its account.
7. Each member whose currency has been distributed to other members under 6 above shall redeem such currency in the currency of the member requesting redemption, or in such other manner as may be agreed between them. If the members involved do not otherwise agree, the member obligated to redeem shall complete redemption within five years of the date of distribution, but shall not be required to redeem in any half-yearly period more than one-tenth of the amount distributed to each other member. If the member does not fulfill this obligation, the amount of currency which should have been redeemed may be liquidated in an orderly manner in any market.
8. Each member whose currency has been distributed to other members under 6 above guarantees the unrestricted use of such currency at all times for the purchase of goods or for payment of sums due to it or to persons in its territories. Each member so obligated agrees to compensate other members for any loss resulting from the difference between the value of its currency in terms of the special drawing right on the date of the decision to liquidate the Fund and the value in terms of the special drawing right realized by such members on disposal of its currency.
9. The Fund shall determine the value of gold under this Schedule on the basis of prices in the market.

10. For the purposes of this Schedule, quotas shall be deemed to have been increased to the full extent to which they could have been increased in accordance with Article III, Section 2(b) of this Agreement.

SCHEDULE L: Suspension of Voting Rights

In the case of a suspension of voting rights of a member under Article XXVI, Section 2(b), the following provisions shall apply:
1. The member shall not:

(a) participate in the adoption of a proposed amendment of this Agreement, or be counted in the total number of members for that purpose, except in the case of an amendment requiring acceptance by all members under Article XXVIII(b) or pertaining exclusively to the Special Drawing Rights Department;
(b) appoint a Governor or Alternate Governor, appoint or participate in the appointment of a Councillor or Alternate Councillor, or elect or participate in the election of an Executive Director.

2. The number of votes allotted to the member shall not be cast in any organ of the Fund. They shall not be included in the calculation of the total voting power, except for purposes of: (a) the acceptance of a proposed amendment pertaining exclusively to the Special Drawing Rights Department and (b) the calculation of basic votes pursuant to Article XII, Section 5(a)(i)
3.

(a) The Governor and Alternate Governor appointed by the member shall cease to hold office.
(b) The Councillor and Alternate Councillor appointed by the member, or in whose appointment the member has participated, shall cease to hold office, provided that, if such Councillor was entitled to cast the number of votes allotted to other members whose voting rights have not been suspended, another Councillor and Alternate Councillor shall be appointed by such other members under Schedule D, and, pending such appointment, the Councillor and Alternate Councillor shall continue to hold office, but for a maximum of thirty days from the date of suspension.
(c) The Executive Director elected by the member, or in whose election the member has participated, shall cease to hold office, unless such Executive Director was entitled to cast the number of votes allotted to other members whose voting rights have not been suspended. In the latter case:
    (i) if more than ninety days remain before the next regular election of Executive Directors, another Executive Director shall be elected for the remainder of the term by such other members by a majority of the votes cast; pending such election, the Executive Director shall continue to hold office, but for a maximum of thirty days from the date of suspension;
    (ii) if not more than ninety days remain before the next regular election of Executive Directors, the Executive Director shall continue to hold office for the remainder of the term.

4. The member shall be entitled to send a representative to attend any meeting of the Board of Governors, the Council, or the Executive Board, but not any meeting of their committees, when a request made by, or a matter particularly affecting, the member is under consideration.

SCHEDULE M: Special One-Time Allocation of Special Drawing Rights

1. Subject to 4 below, each member that, as of September 19, 1997, is a participant in the Special Drawing Rights Department shall, on the 30th day following the effective date of the fourth amendment of this Agreement, receive an allocation of special drawing rights in an amount that will result in its net cumulative allocation of special drawing rights being equal to 29.315788813 per cent of its quota as of September 19, 1997, provided that, for participants whose quotas have not been adjusted as proposed in Resolution No. 45-2 of the Board of Governors, calculations shall be made on the basis of the quotas proposed in that resolution.
2.

(a) Subject to 4 below, each country that becomes a participant in the Special Drawing Rights Department after September 19, 1997 but within three months of the date of its membership in the Fund shall receive an allocation of special drawing rights in an amount calculated in accordance with (b) and (c) below on the 30th day following the later of: (i) the date on which the new member becomes a participant in the Special Drawing Rights Department, or (ii) the effective date of the fourth amendment of this Agreement.
(b) For the purposes of (a) above, each participant shall receive an amount of special drawing rights that will result in such participant's net cumulative allocation being equal to 29.315788813 per cent of its quota as of the date on which the member becomes a participant in the Special Drawing Rights Department, as adjusted:
  (i) first, by multiplying 29.315788813 per cent by the ratio of the total of quotas, as calculated under 1 above, of the participants described in (c) below to the total of quotas of such participants as of the date on which the member became a participant in the Special Drawing Rights Department, and
  (ii) second, by multiplying the product of (i) above by the ratio of the total of the sum of the net cumulative allocations of special drawing rights received under Article XVIII of the participants described in (c) below as of the date on which the member became a participant in the Special Drawing Rights Department and the allocations received by such participants under 1 above to the total of the sum of the net cumulative allocations of special drawing rights received under Article XVIII of such participants as of September 19, 1997 and the allocations received by such participants under 1 above.
  (c) For the purposes of the adjustments to be made under (b) above, the participants in the Special Drawing Rights Department shall be members that are participants as of September 19, 1997 and (i) continue to be participants in the Special Drawing Rights Department as of the date on which

the member became a participant in the Special Drawing Rights Department, and (ii) have received all allocations made by the Fund after September 19, 1997.

3.

(a) Subject to 4 below, if the Federal Republic of Yugoslavia (Serbia/Montenegro) succeeds to the membership in the Fund and the participation in the Special Drawing Rights Department of the former Socialist Federal Republic of Yugoslavia in accordance with the terms and conditions of Executive Board Decision No. 10237-(92/150), adopted December 14, 1992, it shall receive an allocation of special drawing rights in an amount calculated in accordance with (b) below on the 30th day following the later of: (i) the date on which the Federal Republic of Yugoslavia (Serbia/Montenegro) succeeds to membership in the Fund and participation in the Special Drawing Rights Department in accordance with the terms and conditions of Executive Board Decision No. 10237-(92/150), or (ii) the effective date of the fourth amendment of this Agreement.

(b) For the purposes of (a) above, the Federal Republic of Yugoslavia (Serbia/Montenegro) shall receive an amount of special drawing rights that will result in its net cumulative allocation being equal to 29.3157888 13 per cent of the quota proposed to it under paragraph 3(c) of Executive Board Decision No. 10237-(92/150), as adjusted in accordance with 2(b)(ii) and (c) above as of the date on which the Federal Republic of Yugoslavia (Serbia/Montenegro) qualifies for an allocation under (a) above.

4. The Fund shall not allocate special drawing rights under this Schedule to those participants that have notified the Fund in writing prior to the date of the allocation of their desire not to receive the allocation.

5.

(a) If, at the time an allocation is made to a participant under 1, 2, or 3 above, the participant has overdue obligations to the Fund, the special drawing rights so allocated shall be deposited and held in an escrow account within the Special Drawing Rights Department and shall be released to the participant upon discharge of all its overdue obligations to the Fund.

(b) Special drawing rights being held in an escrow account shall not be available for any use and shall not be included in any calculations of allocations or holdings of special drawing rights for the purposes of the Articles, except for calculations under this Schedule. If special drawing rights allocated to a participant are held in an escrow account when the participant terminates its participation in the Special Drawing Rights Department or when it is decided to liquidate the Special Drawing Rights Department, such special drawing rights shall be canceled.

(c) For purposes of this paragraph, overdue obligations to the Fund consist of overdue repurchases and charges in the General Resources Account, overdue principal and interest on loans in the Special Disbursement Account, overdue charges and assessments in the Special Drawing Rights Department, and overdue liabilities to the Fund as trustee.

(d) Except for the provisions of this paragraph, the principle of separation between the General Department and the Special Drawing Rights Department and the unconditional character of special drawing rights as reserve assets shall be maintained.

Appendix 2. Bilateral and Multilateral Surveillance Executive Board Decision – 18 July 2012

1. The Executive Board adopts the Decision on Bilateral and Multilateral Surveillance set forth in Attachment I of SM/12/156 Supplement 2. The Decision on Bilateral and Multilateral Surveillance will become effective 6 months after the date on which the Decision is approved.
2. Decision 13919-(07/51), adopted June 15, 2007, as amended, (the '2007 Surveillance Decision') is repealed as of the effective date of the Decision on Bilateral and Multilateral Surveillance.
3. The Decision on Bilateral and Multilateral Surveillance will apply to all Article IV consultations that have not been completed by the Fund before the effective date of the Decision. (SM/12/156, Sup. 2, 07/17/12)
Decision No. 15203-(12/72), July 18, 2012

Attachment I of SM/12/156 Supplement 2

Bilateral and Multilateral Surveillance

Preamble

Since the adoption in 2007 of the Decision entitled "Bilateral Surveillance over Members' Policies" (the "2007 Decision"), there have been significant developments in the global economy that have highlighted the extent of trade and financial interconnections and integration and the potential benefits and risks of spillovers across national borders. In light of these developments and in recognition of the increasingly important international dimensions of surveillance and of cross-country spillovers, the Fund is of the view that better integrating bilateral and multilateral surveillance, including through the adoption of an integrated surveillance decision covering both responsibilities, would play an important role in providing guidance to both the Fund and its members regarding their mutual responsibilities under Article IV. The Fund emphasizes that the guidance being provided to members in this Decision relates to the performance of their existing obligations under Article IV; no new obligations are created for members by this Decision. Moreover, the Fund recognizes that members have legitimate policy objectives, including domestic social and political policy objectives, that are beyond the scope of Article IV and, accordingly, beyond the scope of this Decision, although when adopting policies to achieve these objectives, members need to ensure that such policies are consistent with their obligations under Article IV. They are also encouraged to be mindful of the impact of such policies on the international monetary system.
This Decision does not, and cannot be construed or used to, expand or broaden the scope—or change the nature—of members' obligations under the Articles of Agreement, directly or indirectly, including the obligations set out in Articles IV, VI and VIII. Part I of this Decision is designed to give guidance to the Fund in its conduct of bilateral and multilateral surveillance. The principles for the guidance of members set forth in Part II of this Decision regarding their exchange rate and domestic economic and financial policies respect the domestic social and political policies of members and will be applied in a manner that pays due regard to the circumstances

of members, and the need for evenhandedness in the practice of surveillance. Moreover, the Principle for the guidance of members' domestic economic and financial policies recognizes that the obligations of members governing such policies under Article IV Section 1 are of a best efforts nature. Finally, looking forward, flexibility will be maintained to allow for the continued evolution of surveillance.
1. This Decision provides guidance to the Fund in:

(a) its general oversight over members' exchange rate and domestic policies pursuant to Article IV, Sections 3 (a) and its firm surveillance over the exchange rate policies of members pursuant to Article IV, Sections 3 (b), (hereinafter referred to as "bilateral surveillance"); and
(b) the exercise of its responsibility to oversee the international monetary system in order to ensure its effective operation pursuant to Article IV, Section 3 (a) (hereinafter referred to as "multilateral" surveillance).

This Decision also provides guidance to members in the conduct of their domestic economic and financial policies and their exchange rate policies.
2. Part I of this Decision sets out the scope and modalities of bilateral and multilateral surveillance. Part II establishes principles for the guidance of members in the conduct of their exchange rate policies and their domestic economic and financial policies for the purposes of ensuring compliance with their obligations under Article IV, Section 1; it also identifies certain developments which, in the Fund's assessment of a member's observance of the principles, would require thorough review and might indicate the need for discussion with the member. Beyond members' obligations under Article IV, Section 1, Part II also encourages members to consider the effects of their policies on the effective operation of the international monetary system. Part III sets out procedures for surveillance. Part IV makes provision for a review of this decision.
3. Fund surveillance over members' policies and over the international monetary system shall be adapted to the needs of the international monetary and financial system as they develop. The principles and procedures set out in this Decision, which apply to all members irrespective of their exchange arrangements and balance of payments positions, are not necessarily comprehensive and are subject to reconsideration by the Fund in the light of experience.

PART I – PRINCIPLES FOR THE GUIDANCE OF THE FUND IN ITS SURVEILLANCE

A The Scope of Surveillance
4. Article IV, Section 3 requires the Fund to conduct both bilateral and multilateral surveillance. While these responsibilities are legally distinct, it is recognized that bilateral and multilateral surveillance are mutually supportive and reinforcing and, accordingly, need to be operationally integrated.

(i) Bilateral Surveillance

5. The scope of bilateral surveillance is determined by members' obligations under Article IV, Section 1. Members undertake under Article IV, Section 1 to collaborate with the Fund and other members to assure orderly exchange arrangements and to

promote a stable system of exchange rates (hereinafter "systemic stability"). Systemic stability is most effectively achieved by each member adopting policies that promote its own balance of payments stability and domestic stability—that is, policies that are consistent with members' obligations under Article IV, Section 1 and, in particular, the specific obligations set forth in Article IV, Section 1, (i) through (iv). "Balance of payments stability" refers to a balance of payments position that does not, and is not likely to, give rise to disruptive exchange rate movements. Except as provided in paragraph 8 below, balance of payments stability is assessed at the level of each member.

6. In its bilateral surveillance, the Fund will focus on those policies of members that can significantly influence present or prospective balance of payments and domestic stability. The Fund will assess whether exchange rate policies are promoting balance of payments stability and whether domestic economic and financial policies are promoting domestic stability and advise the member on policy adjustments necessary for these purposes. Accordingly, exchange rate policies will always be the subject of the Fund's bilateral surveillance with respect to each member, as will monetary, fiscal, and financial sector policies (both their macroeconomic aspects and macroeconomically relevant structural aspects). Other policies will be examined in the context of surveillance only to the extent that they significantly influence present or prospective balance of payments or domestic stability.

7. In the conduct of their domestic economic and financial policies, members are considered by the Fund to be promoting balance of payments stability when they are promoting domestic stability—that is, when they (i) endeavor to direct their domestic economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to their circumstances, and (ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions. It is recognized that there may be circumstances where a member's domestic instability may give rise to systemic instability even in the absence of balance of payments instability. The Fund in its surveillance will assess whether a member's domestic policies are directed toward the promotion of domestic stability. While the Fund will always examine whether a member's domestic policies are directed toward keeping the member's economy operating broadly at capacity, the Fund will examine whether domestic policies are directed toward fostering a high rate of potential growth only in those cases where such high potential growth significantly influences prospects for domestic, and thereby balance of payments, stability. However, the Fund will not require a member that is complying with Article IV, Sections 1(i) and (ii) to change its domestic policies in the interests of balance of payments stability.

8. This Decision applies to members of currency unions, subject to the following considerations. Members of currency unions remain subject to all of their obligations under Article IV, Section 1 and, accordingly, each member is accountable for those policies that are conducted by union-level institutions on its behalf. In its surveillance over the policies of members of a currency union, the Fund will assess whether relevant policies implemented at the level of the currency union (including exchange rate and monetary policies) and at the level of members are promoting the balance of payments and domestic stability of the union and will advise on policy

adjustments necessary for this purpose. In particular, the Fund will assess whether the exchange rate policies of the union are promoting its balance of payments stability, and whether domestic policies implemented at the level of the union are promoting the domestic, and thereby balance of payments, stability of the union. Because, in a currency union, exchange rate policies are implemented at the level of the union, the principles for the guidance of members' exchange rate policies and the associated indicators set out in paragraphs 21 and 22 of this Decision only apply at the level of the currency union. With respect to the conduct of domestic policies implemented at the level of individual members, the Fund will assess whether a member of a currency union is promoting its own domestic stability and will consider the member to be promoting the balance of payments and domestic stability of the union when it is promoting its own domestic stability. In view of the importance of individual members' balances of payments for the domestic stability of the member and the balance of payments and domestic stability of the union, the Fund's assessment of the policies of a member of a currency union will always include an evaluation of developments in the member's own balance of payments.

(ii) Multilateral Surveillance

9. The scope of multilateral surveillance is determined by the obligation of the Fund under Article IV Section 3 (a) to oversee the international monetary system in order to ensure its effective operation. In the context of multilateral surveillance, the Fund may not and will not require a member to change its policies in the interests of the effective operation of the international monetary system. It may, however, discuss the impact of members' policies on the effective operation of the international monetary system and may suggest alternative policies that, while promoting the member's own stability, better promote the effective operation of the international monetary system.

10. The international monetary system includes, in particular: (a) the rules governing exchange arrangements between countries and the rates at which foreign exchange is purchased and sold; (b) the rules governing the making of payments and transfers for current international transactions between countries; (c) the arrangements respecting the regulation of international capital movements; and (d) the arrangements under which international reserves are held, including official arrangements through which countries have access to liquidity through purchases from the Fund or under official currency swap arrangements.

11. The international monetary system is considered to be operating effectively when the areas it governs do not exhibit symptoms of malfunction such as, for example, persistent significant current account imbalances, an unstable system of exchange rates including foreign exchange rate misalignment, volatile capital flows, the excessive build up or depletion of reserves, or imbalances arising from excessive or insufficient global liquidity. It is recognized that, typically, the international monetary system may only operate effectively in an environment of global economic and financial stability, and that its effective operation contributes to such stability. Both global economic and financial stability and the effective operation of the international monetary system may be affected by, among other factors, members'

own balance of payments and domestic stability, economic and financial interconnections among members' economies and potential spillovers from members' economic and financial policies through balance of payments and other channels.

12. Therefore, in its multilateral surveillance, the Fund will focus on issues that may affect the effective operation of the international monetary system, including (a) global economic and financial developments and the outlook for the global economy, including risks to global economic and financial stability, and (b) the spillovers arising from policies of individual members that may significantly influence the effective operation of the international monetary system, for example by undermining global economic and financial stability. The policies of members that may be relevant for this purpose include exchange rate, monetary, fiscal, and financial sector policies and policies respecting capital flows.

B The Modalities of Surveillance

13. The Fund's assessment of an individual member's policies and its advice to a member in the context of surveillance will be conducted in a manner that is consistent with the following modalities. Except where they are expressly limited in their application to bilateral surveillance, these modalities shall apply to policy discussions between the Fund and individual members whether they take place in the context of bilateral or multilateral surveillance.

14. Continuous dialogue and persuasion are key pillars of effective surveillance. The Fund, in its surveillance over the policies of individual members, will clearly and candidly assess relevant economic developments, prospects, risks, and policies of the member in question, and advise on these. Such assessments, advice and discussion of alternative policies are intended to assist that member in making policy choices, and to enable other members to discuss these policy choices with that member. The Fund will foster an environment of frank and open dialogue and mutual trust with each member and will be evenhanded across members, affording similar treatment to members in similar relevant circumstances.

15. The Fund's assessment of a member's policies and its advice on these policies will pay due regard to the circumstances of the member. This assessment and advice will be formulated within the framework of a comprehensive analysis of the general economic situation and economic policy strategy of the member, and will pay due regard to the member's implementation capacity. Moreover, in advising members on the manner in which they may promote their balance of payments and domestic stability and the effective operation of the international monetary system, the Fund shall, to the extent permitted under Article IV, take into account the member's other objectives and shall respect its domestic social and political policies.

16. The Fund's assessment of a member's policies and its advice to the member will be informed by, and be consistent with, a multilateral framework that incorporates relevant aspects of the global and regional economic and financial environment, including exchange rates, international capital market conditions, and key linkages among members. In the context of bilateral surveillance, the Fund's assessment and advice will take into account the impact of a member's policies on other members to the extent that the member's policies undermine the promotion of its own balance of payments or domestic stability.

17. The Fund's assessment of a member's policies and its advice to a member will, to the extent possible, be placed in the context of an examination of the member's medium-term objectives and the planned conduct of policies, including possible responses to the most relevant contingencies.

18. The Fund's assessment of a member's policies will always include an evaluation of the developments in the member's balance of payments, including the size and sustainability of capital flows, against the background of its reserves, the size and composition of its other external assets and its external liabilities, and its opportunities for access to international capital markets.

PART II – PRINCIPLES FOR THE GUIDANCE OF MEMBERS' POLICIES

19. It is recognized that a member's overall mix of economic and financial policies, including both exchange rate and domestic policies, contributes to the members' balance of payments stability and domestic stability and may impact the stability of the international monetary system. Set out below are (i) principles that are adopted for the purposes of bilateral surveillance and that provide guidance to members in the conduct of their exchange rate policies and their domestic economic and financial policies; and (ii) guidance that is adopted for the purpose of multilateral surveillance and that provides encouragement to members in the conduct of economic and financial policies with a view to ensuring the effective operation of the international monetary system.

(i) Bilateral Surveillance

20. Principles A through D below are adopted pursuant to Article IV, Section 3 (b) and are intended to provide guidance to members in the conduct of their exchange rate policies in accordance with their obligations under Article IV, Section 1. Principle E is adopted pursuant to Article IV, Section 1 and is intended to provide guidance to members in the conduct of their domestic economic and financial policies. The Fund recognizes that members have legitimate policy objectives, including domestic social and political policy objectives that are beyond the scope of Article IV and accordingly beyond the scope of this Decision. The Principles set out in paragraph 21 of this Decision respect the domestic social and political policies of members. The Fund will apply these Principles evenhandedly and pay due regard to the circumstances of members. Members are presumed to be implementing policies that are consistent with the Principles. When, in the context of surveillance, a question arises as to whether a particular member is implementing policies consistent with the Principles, the Fund will give the member the benefit of any reasonable doubt, including with respect to an assessment of fundamental exchange rate misalignment. In circumstances where the Fund has determined that a member is implementing policies that are not consistent with these Principles and is informing the member as to what policy adjustments should be made to address this situation, the Fund will take into consideration the disruptive impact that excessively rapid adjustment would have on the member's economy.

21. Principle A sets forth the obligation contained in Article IV, Section 1(iii); further guidance on its meaning is provided in the Annex to this Decision. Principles B through E constitute recommendations rather than obligations of members. A

determination by the Fund that a member is not following one of these recommendations would not create a presumption that that member is in breach of its obligations under Article IV, Section 1.

A. A member shall avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.
B. A member should intervene in the exchange market if necessary to counter disorderly conditions, which may be characterized *inter alia* by disruptive short-term movements in the exchange rate of its currency.
C. Members should take into account in their intervention policies the interests of other members, including those of the countries in whose currencies they intervene.
D. A member should avoid exchange rate policies that result in balance of payments instability.
E. A member should seek to avoid domestic economic and financial policies that give rise to domestic instability.

22. In its surveillance of the observance by members of the Principles set forth above, the Fund shall consider the following developments as among those which would require thorough review and might indicate the need for discussion with a member:

(i) protracted large-scale intervention in one direction in the exchange market;
(ii) official or quasi-official borrowing that either is unsustainable or brings unduly high liquidity risks, or excessive and prolonged official or quasi-official accumulation of foreign assets, for balance of payments purposes;
(iii) (a) the introduction, substantial intensification, or prolonged maintenance, for balance of payments purposes, of restrictions on, or incentives for, current transactions or payments, or (b) the introduction or substantial modification for balance of payments purposes of restrictions on, or incentives for, the inflow or outflow of capital;
(iv) the pursuit, for balance of payments purposes, of monetary and other financial policies that provide abnormal encouragement or discouragement to capital flows;
(v) fundamental exchange rate misalignment;
(vi) large and prolonged current account deficits or surpluses; and
(vii) large external sector vulnerabilities, including liquidity risks, arising from private capital flows.

(ii) Multilateral Surveillance

23. Beyond members' obligations under Article IV Section 1, and recognizing that a member's policies may have a significant impact on other members and on global economic and financial stability, members are encouraged to implement exchange

rate and domestic economic and financial policies that, in themselves or in combination with the policies of other members, are conducive to the effective operation of the international monetary system.

PART III – PROCEDURES FOR SURVEILLANCE

24. In conducting surveillance, the Fund will make use of various procedures and will adapt these to changing circumstances. As described below, Article IV consultations with members serve as vehicles for both bilateral and multilateral surveillance, except for ad hoc consultations referred to in paragraph 29 which are a vehicle for bilateral surveillance. Other procedures serve as vehicles for multilateral surveillance.
25. Each country that becomes a member of the Fund after the adoption of this decision shall, within thirty days of the date of its membership, notify the Fund in appropriate detail of the exchange arrangements it intends to apply in fulfillment of its obligations under Article IV, Section 1. Each member, regardless of its date of membership, shall notify the Fund promptly of any changes in its exchange arrangements.

C Article IV Consultations

26. Members shall consult with the Fund regularly under Article IV to enable the Fund to (i) assess members' compliance with their obligations under Article IV, Section 1 and, in particular, to exercise firm surveillance over the conduct of their exchange rate policies, and (ii) discuss with members the impact of their policies on the operation of the international monetary system. In principle, the consultations under Article IV shall comprehend the regular consultations under Articles VIII and XIV, and shall take place annually. They shall include consideration of the observance by members of the principles and guidance set forth in paragraphs 21 and 23 of this Decision as well as of a member's obligations under Article IV, Section 1. In addition, they shall include a discussion of the spillover effects of a member's exchange rate and domestic economic and financial policies that may significantly influence the effective operation of the international monetary system, for example, by undermining global economic and financial stability.
27. It is expected that no later than sixty-five days after the termination of discussions between the member and the staff, the Executive Board will reach conclusions and thereby complete the consultation under Article IV, except in the case of consultations with members eligible for financing under the Poverty Reduction and Growth Trust established by Decision No. 8759- (87/176), ESAF, as amended, where it is expected that the Executive Board will reach conclusions no later than three months from the termination of discussions between the member and the staff.

D Bilateral Surveillance – Ad Hoc Article IV Consultations

28. The Managing Director shall maintain close contact with members in connection with their exchange arrangements and their policies under Article IV, Section 1, and will be prepared to discuss on the initiative of a member important changes that it contemplates in its exchange arrangements or its policies.
29.

(a) Whenever the Managing Director considers that important economic or financial developments are likely to affect a member's exchange rate policies or the behaviour of the exchange rate of its currency, the Managing Director shall, in the context of the Fund's exercise of firm surveillance over members' exchange rate policies, initiate informally and confidentially a discussion with the member. After such discussion the Managing Director may report to the Executive Board or informally advise the Executive Directors and, if the Executive Board considers it appropriate, an ad hoc Article IV consultation between the member and the Fund shall be conducted in accordance with the procedure set out in subparagraph (b) below.

(b) A staff report will be circulated to the Executive Directors under cover of a note from the Secretary specifying a tentative date for Executive Board discussion which will be at least 15 days later than the date upon which the report is circulated. The Secretary's note will also set out a draft decision taking note of the staff report and completing the ad hoc consultation without discussion or approval of the views contained in the report; the decision will be adopted upon the expiration of the two-week period following the circulation of the staff report to the Executive Directors unless, within such period, there is a request from an Executive Director or decision of the Managing Director to place the report on the agenda of the Executive Board. If the staff report is placed on the agenda, the Executive Board will discuss the report and will reach conclusions which will be reflected in a summing up.

(c) Unless otherwise decided by the Executive Board, the conduct of an ad hoc consultation with a member will not affect the consultation cycle applicable to the member or the deadline for completion of the next consultation with the member.

E Other Multilateral Surveillance Activities

(i) Periodic Reports on the International Monetary System

30. The Fund will assess all issues relevant for the effective operation of the international monetary system, as described in paragraph 11 of this Decision. These assessments may take the form of periodic or ad hoc reports produced by staff for discussion by the Executive Board. In particular, broad developments in exchange rates will be reviewed periodically by the Fund, *inter alia* in discussions of the international adjustment process within the framework of the World Economic Outlook. The Fund will continue to conduct consultations in preparing for these discussions. In order to inform the Fund's oversight of the operation of the international monetary system, the Managing Director may collaborate with other international bodies in conducting assessments of relevant issues.

(ii) Multilateral Consultations

31. Whenever the Managing Director considers that an issue has arisen in a policy area or a member country that may significantly influence the effective operation of the international monetary system, and that requires collaboration among members that is not already effectively taking place in another forum in which the Fund is a party, the Managing Director shall informally and confidentially discuss the issue

with the relevant members. When the Managing Director forms the view that a multilateral consultation is necessary, the Managing Director may recommend such a consultation to the Executive Board, which may decide that a multilateral consultation will be held. Members shall consult with the Fund in a manner that is consistent with the decision of the Executive Board.

32. A multilateral consultation will consist of discussions between Fund staff and management and officials of relevant member countries, including, in the case of a currency union, with officials of relevant union-level institutions. The Fund will facilitate discussions among participating members and encourage them to agree on policy adjustments that will promote the effective operation of the international monetary system. In these discussions, the Fund will provide analysis and propose policy options that participating members may adopt, and may advise on the effect of different combinations of policy adjustments. During the course of these discussions, the Executive Board will be briefed by the Managing Director.

33. After the conclusion of these discussions, the Managing Director will report to the Executive Board on the discussions, any agreed policy adjustments and their impact on the participating members and the operation of the international monetary system. The Executive Board will conclude the multilateral consultation with the formal consideration of this report.

PART IV – REVIEW

34. It is expected that the Fund will review this Decision and its general implementation at intervals of three years, and at such other times as consideration of such matters may be placed on the agenda of the Executive Board.

ANNEX

Article IV Section 1(iii) and Principle A

1. Article IV, Section 1 (iii) of the Fund's Articles provides that members shall "avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members." The language of this provision is repeated in Principle A contained in Part II of this Decision. The text set forth below is designed to provide further guidance regarding the meaning of this provision.

2. A member would only be acting inconsistently with Article IV, Section 1(iii) if the Fund determined both that: (a) the member was manipulating its exchange rate or the international monetary system and (b) such manipulation was being carried out for one of the two purposes specifically identified in Article IV, Section 1(iii).

(a) "Manipulation" of the exchange rate is only carried out through policies that are targeted at—and actually affect—the level of an exchange rate. Moreover, manipulation may cause the exchange rate to move or may prevent such movement.

(b) A member that is manipulating its exchange rate would only be acting inconsistently with Article IV, Section 1(iii) if the Fund were to determine that such manipulation was being undertaken "in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members." In that regard, a member will only be considered to be manipulating exchange rates in order to gain an unfair competitive advantage over other members if the Fund determines both that: (A) the member is engaged in these policies for the purpose of securing fundamental exchange rate misalignment in the form of an undervalued exchange rate and (B) the purpose of securing such misalignment is to increase net exports.

3. It is the responsibility of the Fund to make an objective assessment of whether a member is observing its obligations under Article IV, Section 1 (iii), based on all available evidence, including consultation with the member concerned. Any representation made by the member regarding the purpose of its policies will be given the benefit of any reasonable doubt.

Appendix 3. IMF Guidelines on Conditionality (25 September 2002)

A Principles

1. *Basis and purpose of conditionality*. Conditions on the use of Fund resources are governed by the Fund's Articles of Agreement and implementing decisions of the Executive Board. Conditionality – that is, program-related conditions – is intended to ensure that Fund resources are provided to members to assist them in resolving their balance of payments problems in a manner that is consistent with the Fund's Articles and that establishes adequate safeguards for the temporary use of the Fund's resources.
2. *Early warning and prevention.* Conditionality is one element in a broad strategy for helping members strengthen their economic and financial policies. Through formal and informal consultations, multilateral surveillance including the World Economic Outlook and discussions of capital market developments, advice to members on the voluntary adoption of appropriate standards and codes, and the provision of technical assistance, the Fund encourages members to adopt sound economic and financial policies as a precaution against the emergence of balance of payments difficulties, or to take corrective measures at an early stage of the development of difficulties.
3. *Ownership and capacity to implement programs.* National ownership of sound economic and financial policies and an adequate administrative capacity are crucial for successful implementation of Fund-supported programs. In responding to members' requests to use Fund resources and in setting program-related conditions, the Fund will be guided by the principle that the member has primary responsibility for the selection, design, and implementation of its economic and financial policies. The Fund will encourage members to seek to broaden and deepen the base of support for sound policies in order to enhance the likelihood of successful implementation.
4. *Circumstances of members.* In helping members to devise economic and financial programs, the Fund will pay due regard to the domestic social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems and their administrative capacity to implement reforms. Conditionality and program design will also reflect the member's circumstances and the provisions of the facility under which the Fund's financing is being provided. The causes of balance of payments difficulties and the emphasis to be given to various program goals may differ among members, and the appropriate financing, the specification and sequencing of policy adjustments, and the time required to correct the problem will reflect those and other differences in circumstances. The member's past performance in implementing economic and financial policies will be taken into account as one factor affecting conditionality, with due consideration to changes in circumstances that would indicate a break with past performance.
5. *Approval of access to Fund resources.* The Fund will ensure consistency in the application of policies relating to the use of its resources with a view to maintaining the uniform treatment of members. A member's request to use Fund resources will

be approved only if the Fund is satisfied that the member's program is consistent with the Fund's provisions and policies and that it will be carried out, and in particular that the member is sufficiently committed to implement the program. The Managing Director will be guided by these principles in making recommendations to the Executive Board with respect to the approval of the use of Fund resources by members.
6. *Focus on program goals*. Fund-supported programs should be directed primarily toward the following macroeconomic goals

(a) solving the member's balance of payments problem without recourse to measures destructive of national or international prosperity; and
(b) achieving medium-term external viability while fostering sustainable economic growth.

7. *Scope of conditions.* Program-related conditions governing the provision of Fund resources will be applied parsimoniously and will be consistent with the following principles:

(a) Conditions will be established only on the basis of those variables or measures that are reasonably within the member's direct or indirect control and that are, generally, either (i) of critical importance for achieving the goals of the member's program or for monitoring the implementation of the program, or (ii) necessary for the implementation of specific provisions of the Articles or policies adopted under them. In general, all variables or measures that meet these criteria will be established as conditions.
(b) Conditions will normally consist of macroeconomic variables and structural measures that are within the Fund's core areas of responsibility. Variables and measures that are outside the Fund's core areas of responsibility may also be established as conditions but may require more detailed explanation of their critical importance. The Fund's core areas of responsibility in this context comprise: macroeconomic stabilization; monetary, fiscal, and exchange rate policies, including the underlying institutional arrangements and closely related structural measures; and financial system issues related to the functioning of both domestic and international financial markets.
(c) Program-related conditions may contemplate the member meeting particular targets or objectives (outcomes-based conditionality), or taking (or refraining from taking) particular actions (actions-based conditionality). The formulation of individual conditions will be based, in particular, upon the circumstances of the member.

8. *Responsibility of the Fund for conditionality.* The Fund is fully responsible for the establishment and monitoring of all conditions attached to the use of its resources. There will be no cross-conditionality, under which the use of the Fund's resources would be directly subjected to the rules or decisions of other organizations. When establishing and monitoring conditions based on variables and measures that are not within its core areas of responsibility, the Fund will, to the fullest extent possible, draw on the advice of other multilateral institutions, particularly the

World Bank. The application of a 'lead agency' framework, such as between the Fund and the Bank, will be implemented flexibly to take account of the circumstances of members and the overlapping interests of the two institutions with respect to some aspects of members' policies. The Fund's policy advice, program design, and conditionality will, insofar as possible, be consistent and integrated with those of other international institutions within a coherent country-led framework. The roles of each institution, including any relevant conditionality, will be stated clearly in Fund-related program documents.

B Modalities

9. *Nature of Fund arrangements.* A Fund arrangement is a decision of the Executive Board by which a member is assured that it will be able to make purchases or receive disbursements from the Fund in accordance with the terms of the decision during a specified period and up to a specified amount. Fund arrangements are not international agreements and therefore language having a contractual connotation will be avoided in arrangements and in program documents. Appropriate consultation clauses will be incorporated in all arrangements.

10. *Members' program documents.* The authorities' policy intentions will be described in documents such as a Letter of Intent (LOI), or a Memorandum on Economic and financial Policies (MEFP) that may be accompanied by a Technical Memorandum of Understanding (TMU). These documents will be prepared by the authorities, with the cooperation and assistance of the Fund staff, and will be submitted to the Managing Director for circulation to the Executive Board. The documents should reflect the authorities' policy goals and strategies. In addition to conditions specified in these documents, members requesting the use of Fund resources may in exceptional cases communicate confidential policy understandings to the Fund in a side letter addressed to the Managing Director and disclosed to the Executive Board. In all their program documents, the authorities should clearly distinguish between the conditions on which the Fund's financial support depends and other elements of the program. Detailed policy matrices covering the broader agenda should be avoided in program documents such as LOIs and MEFPs unless they are considered necessary by the authorities to express their policy intentions.

11. *Monitoring of performance.* The implementation of the member's understandings with the Fund may be monitored, in particular, on the basis of prior actions, performance criteria, program and other reviews, and other variables and measures established as structural benchmarks or indicative targets.

(a) *Prior actions.* A member may be expected to adopt measures prior to the Fund's approval of an arrangement, completion of a review, or the granting of a waiver with respect to a performance criterion when it is critical for the successful implementation of the program that such actions be taken to underpin the upfront implementation of important measures. In reaching understandings on prior actions, the Fund will also take into account the strain that excessive reliance upon such actions can place on members' implementation capacity. The Managing Director will keep Executive Directors informed in an appropriate manner of the progress of discussions with the member.

(b) *Performance criteria.* A performance criterion is a variable or measure whose observance or implementation is established as a formal condition for the making of purchases or disbursements under a Fund arrangement. Performance criteria will apply to clearly-specified variables or measures that can be objectively monitored by the staff and are so critical for the achievement of the program goals or monitoring implementation that purchases or disbursements under the arrangement should be interrupted in cases of nonobservance. The number and content of performance criteria may vary because of the diversity of circumstances and institutional arrangements of members.

(c) *Reviews.* Reviews are conducted by the Executive Board.

   (i) *Program reviews.* Program reviews provide a framework for an assessment of whether the program is broadly on track and whether modifications are necessary. A program review will be completed only if the Executive Board is satisfied, based on the member's past performance and policy understandings for the future, that the program remains on track to achieve its objectives. In making this assessment, the Executive Board will take into consideration, in particular, the member's observance of performance criteria, indicative targets, and structural benchmarks, and the need to safeguard Fund resources. The elements of a member's program that will be taken into account for the completion of a review will be specified as fully and transparently as possible in the arrangement. Arrangements will provide for reviews to take place at a frequency appropriate to the member's circumstances. Reviews are expected to be held every six months, but substantial uncertainties concerning major economic trends or policy implementation may warrant more frequent monitoring. In cases of major delays in the completion of a review, the Managing Director will inform Executive Directors in an appropriate manner.

   (ii) *Financing assurances reviews.* Where the Fund is providing financial assistance to a member that has outstanding sovereign external payments arrears to private creditors or that, by virtue of the imposition of exchange controls, has outstanding non-sovereign external payments arrears, the Executive Board will conduct a financing assurances review to determine whether adequate safeguards remain in place for the further use of the Fund's resources in the member's circumstances and whether the member's adjustment efforts are undermined by developments in creditor-debtor relations. More specifically, every purchase or disbursement made available after the approval of the arrangement will, while such arrears remain outstanding, be made subject to the completion of a financing assurances review. Financing assurances reviews may also be established where the member has outstanding arrears to official creditors.

(d) *Other variables and measures.* In monitoring the implementation of a member's program, the Fund may also examine variables and measures established as indicative targets and structural benchmarks. The same principles governing the scope of conditions set out in paragraph 7 apply to these variables and measures as well as to other program-related conditions.

(i) *Indicative targets.* Variables may be established as indicative targets for the part of an arrangement for which they cannot be established as performance criteria because of substantial uncertainty about economic trends. As uncertainty is reduced, these targets will normally be established as performance criteria, with appropriate modifications as necessary. Indicative targets may also be established in addition to performance criteria as quantitative indicators to assess the member's progress in meeting the objectives of a program in the context of a program review.

(ii) *Structural benchmarks.* A measure may be established as a structural benchmark where it cannot be specified in terms that may be objectively monitored or where its non-implementation would not, by itself, warrant an interruption of purchases or disbursements under an arrangement. Structural benchmarks are intended to serve as clear markers in the assessment of progress in the implementation of critical structural reforms in the context of a program review.

12. *Waivers*. The Fund will grant a waiver for nonobservance of a performance criterion only if satisfied that, notwithstanding the nonobservance, the program will be successfully implemented, either because of the minor or temporary nature of the nonobservance or because of corrective actions taken by the authorities. The Fund will grant a waiver of the applicability of a performance criterion only if satisfied that, notwithstanding the unavailability of the information necessary to assess observance, the program will be successfully implemented and there is no clear evidence that the performance criterion will not be met.

13. *Floating tranches*. Conditions will normally apply to specified dates or continuously. However, when the Fund judges that the member will need to implement a particular structural measure or meet a particular performance target during the program period but not necessarily by a specific date, and when flexibility in timing would promote national ownership, the arrangement may provide for the purchase or disbursement of Fund resources to be made available whenever the measure is implemented or the target observed. These floating tranches are expected to apply primarily to structural performance criteria that are included because of their importance for medium-term external sustainability and growth.

C Evaluation and Review

14. *Program evaluation.* The staff will prepare an analysis and assessment of the performance under programs supported by use of the Fund's resources in connection with Article IV consultations and as appropriate in connection with further requests for use of the Fund's resources.

15. *Periodic review.* The Fund will review the application of this Decision at intervals of two years and at such other times as consideration of it is placed on the agenda of the Executive Board. These reviews will evaluate the consistency of conditionality with these guidelines, the appropriateness and implementation of programs, and the effectiveness of policy instruments.

16. Decision No. 270-(53/95), adopted December 23, 1953, Stand-by Arrangements as amended, Decision No. 6056-(79/38), adopted March 2, 1979, Guidelines on

Conditionality, and Decision No. C-3220-(01/24), adopted March 9, 2001, Concluding Remarks by the Chairman – Conditionality in Fund-Supported Programs, are repealed. (SM/02/276, Rev. 1, 9/23/02)
Decision No. 12864-(02/102)
September 25, 2002,
as amended by Decision No. 13814-(06/98),
November 15, 2006.

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